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ABATEMENT AND REVIVAL.

See ACTIONS, 2–7.

ACCOUNTS AND ACCOUNTING.

See CLAIMS AGAINST THE UNITED STATES, 1;
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PRACTICE AND PROCEDURE, 36.

ACTIONS.

1. *Right of; who competent to sue; multiplicity of suits.*

It is not competent for each individual having dealings with a regulated public utility corporation to raise a contest in the courts over questions which can be settled in a general and conclusive manner. (*Chicago, M. & St. P. Ry.* v. *Minnesota*, 134 U. S. 418.) *In re Engelhard*, 646.

2. *Abatement of action to enjoin public officer.*

A suit to enjoin a public officer from enforcing a statute is personal, and in the absence of statutory provision for continuing it against his successor, abates upon his death or retirement from office. (*United States* v. *Boutwell*, 17 Wall. 604.) *Pullman Co.* v. *Croom*, 571.

3. *Abatement and revival; actions which do not abate.*

The only exceptions recognized to this rule are boards and bodies of quasi-corporate character having continuous existence. (*Marshall* v. *Dye*, *ante*, p. 250.) *Ib.*

4. *Abatement by death, of action to enjoin public officer.*

Where the only state official, as to whom an injunction against enforcing a state statute has been applied for under § 266 of the Judicial Code and denied, dies pending the appeal, the action abates and the appeal to this court will be dismissed. *Ib.*

5. *Abatement; stipulation against; vacation of order based on.*

In such a case an order based upon a stipulation continuing the case against the successor of the deceased defendant must and can be vacated, there having been no final judgment in the case. *Ib.*

6. *Abatement by death of public officer sought to be enjoined; effect of joinder of other officials.*

The fact that other officials had been joined as defendants cannot give this court jurisdiction of an appeal from an order denying an injunction applied for under § 266 of the Judicial Code where the injunction had only been asked against an officer who has died pending the appeal. *Ib.*

7. *Continuance; effect of change of personnel of board of public officials.*

Where a board of public officials is a continuing body, notwithstanding its change of personnel, as is the case with the State Board of Election of Indiana, the suit will be continued against the successors in office of those who ceased to be members of the board. (*Murphy* v. *Utter*, 186 U. S. 95.) *Marshall* v. *Dye*, 250.

8. *Substitution of parties; application of act of February 8, 1899.*

The act of February 8, 1899, c. 121, 30 Stat. 822, providing for substituting the successors in office of public officers, applies only to Federal officials and not to state officials. *Pullman Co.* v. *Croom*, 571.

9. *Against United States; must rest on contract.*

A suit against the Government must rest on contract as the Government has not consented to be sued for torts even though committed by its officers in discharge of their official duties. *Peabody* v. *United States*, 530.

See BANKRUPTCY, 16, 17, 18;
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See JURISDICTION, G 4;
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APPEAL AND ERROR.
1. *Who entitled to review of decision of state court.*
Only those having a personal, as distinguished from an official, interest can bring to this court for review the judgment of a state court on the ground that a Federal right has been denied. (*Smith* v. *Indiana*, 191 U. S. 138.) *Marshall* v. *Dye*, 250.

2. *Who entitled to review of decision of state court.*
Whether the State Board of Elections shall submit a new state constitution to the electors of a State in accordance with a state statute, concerns the members of the board in their official capacity only, and a judgment of the state court that they refrain from so doing concerns their official and not their personal rights and this court will not review such judgment. *Ib.*

3. *Right to prosecute error where State and not relator real party plaintiff.*
Where the relator has no authority to sue except by consent of the State, and he is a mere agent for calling judicial authority into activity for protection of general public rights, and not for redress of individual wrongs, the State is the real party plaintiff and the relator has no power without its consent to prosecute error to this court. *Bolens* v. *Wisconsin*, 616.

4. *Right to prosecute error where State real party plaintiff and does not consent.*
Where, in such a case, the State does not consent that the relator prosecute error the writ will be dismissed; the case is not within Rev. Stat., § 709 (Judicial Code, § 237), and this court has not jurisdiction. *Ib.*

5. *Writ of error; when to lower state court; quœre as to.*
Quœre, whether in this case the writ of error should not have run to the lower state court, the higher court having refused to transfer the cause for review; but the Chief Justice of the State having allowed the writ prior to the decision of this court in *Norfolk Turnpike Co.* v. *Virginia*, 225 U. S. 264, it will not be dismissed. *Mulcrevy* v. *San Francisco*, 669.

6. *Perfecting appeal to Circuit Court of Appeals in admiralty cause; sufficiency of apostles on appeal; dispensing with payment of clerk's fees.*
When the appellant in a cause in admiralty causes to be printed and presented to the Circuit Court of Appeals under the act of February 13, 1911, printed copies of the apostles on appeal, each of which contains a printed index of the contents thereof and is prepared and printed under a rule of the lower court adopted in pursuance of the said act, the Circuit Court of Appeals is authorized to hear and determine the cause on such copies and to dispense with the requirement of the payment of fees to its clerk by the appellant as prescribed by its rules and which are the same as those prescribed by this court under the act of February 19, 1897. *Rainey* v. *Grace & Co.*, 703.

7. *Indexing record; fee of clerk of Circuit Court of Appeals; effect of act of February 13, 1911.*

The first section of the act of February 13, 1911, sets aside by implication the provision of the fee bill prescribed by this court so far as it relates to the fee to the clerk of the Circuit Court of Appeals for indexing the record when the same has already been properly printed and indexed in pursuance of a rule of the lower court. *Ib.*

See JURISDICTION;
PRACTICE AND PROCEDURE;
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APOSTLES ON APPEAL.

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See BANKRUPTCY, 16;
BONDS, 2.

AUTOMATIC COUPLERS.

See SAFETY APPLIANCE ACT.

BAILMENT.

See BANKRUPTCY, 19.

BANKRUPTCY.

1. *Administration of estate; examination under § 21a of act.*

The estate of the bankrupt is in process of administration after the petition has been filed and a receiver appointed and an examination may be ordered at any time thereafter under § 21a of the Bankruptcy Act. *Cameron* v. *United States*, 710.

2. *Examination of bankrupt; perjury in; prosecution for; effect of § 7 of act.*

Section 7 of the Bankruptcy Act does not prevent a prosecution for perjury in the giving of testimony by the bankrupt; the immunity applies to past transactions concerning which the bankrupt is examined. (*Glickstein* v. *United States*, 222 U. S. 139.) *Ib.*

3. *Advances made to bankrupt; right to recover back.*

These cases are distinguished from *Gorman* v. *Littlefield*, 229 U. S. 19, and other cases in which there was a specific *res* which identified the fund and separated it from the general mass of the estate. *National City Bank* v. *Hotchkiss*, 50.

4. *Advances made to bankrupt; right to recover back.*

A general creditor may increase the bankrupt's estate by his advances and lose the right to take them back. *Ib.*

5. *Liens on bankrupt's estate; bona fides; superiority of right of lienor over that of general creditors.*

Where the goods never would have come into the bankrupt's hands, had he not promised to give a lien thereon to one making the advances necessary for obtaining them, there is no reason why the rights of general creditors without liens should intervene to defeat security given in good faith and before there was any knowledge of insolvency. *National City Bank* v. *Hotchkiss*, *ante*, p. 50, distinguished. *Greey* v. *Dockendorff*, 513.

6. *Liens on bankrupt's estate; effect of secrecy to invalidate.*

Secrecy of a lien on goods purchased by advances made by the lienor does not invalidate it where there was no active concealment or any attempt to mislead anyone interested to know the truth, nor does merely keeping silent in such case create an estoppel. *Ib.*

7. *Liens, exemption from; effect of act of 1867 as amended by act of 1873.*

A state constitution cannot exempt property from existing liens nor can Congress give such constitution greater effect; and so *held* that under the Bankruptcy Act of 1867 as amended by the act of March 3, 1873, c. 235, 17 Stat. 577, a homestead in Georgia was not exempted from liens which had attached prior to the bankruptcy, notwithstanding provisions in the Georgia constitution to that effect. (*Gunn* v. *Barry*, 15 Wall. 610.) *Kener* v. *La Grange Mills*, 215.

8. *Preferences; deposit in bank as; right of set-off.*

A deposit made after the bank's officers have forbidden payment of

checks against the bankrupt's deposit account is a payment and a preference and a set-off cannot be allowed. *Mechanics' National Bank* v. *Ernst*, 60.

9. *Preferences; delivery of securities after knowledge of impending insolvency.*

A general promise to give security on demand puts the creditor in no better position than an agreement to pay money and does not justify a delivery of securities after knowledge of impending bankruptcy. It is an illegal preference. *Ib.*

10. *Preferences; delivery of securities constituting.*

National City Bank v. *Hotchkiss*, *ante*, p. 50, followed to effect that the delivery by the bankrupt of securities to a bank to secure a clearance loan constituted an illegal preference. *Ib.*

11. *Preferences; delivery by bank of securities to customer.*

An understanding that the proceeds of a loan made by a bank to a customer and placed to the credit of his general account are to be used to take up certain securities does not, in the absence of any special agreement to that effect, create a lien upon those securities, and the delivery of such securities to the bank with notice of the customer's impending insolvency is an illegal preference under the Bankruptcy Act. *National City Bank* v. *Hotchkiss*, 50.

12. *Preferences; liability of holder of securities constituting preference in suit to recover back.*

Under an agreement, made in a suit by a receiver against a bank to recover securities in specie as an illegal preference, that the bank should hold them pending the decision of the suit with a power to sell in its discretion which had not been exercised, *held* that the bank was only liable for the securities and not for their value at the time the agreement was made. *Ib.*

13. *Preferences; knowledge of preferred creditor.*

This court approves the findings of the court below that the bank knew of the impending bankruptcy when it demanded and accepted security for an existing loan. *Mechanics' National Bank* v. *Ernst*, 60.

14. *Preferences; knowledge of preferred creditor.*

An unusual proceeding in the banking business, such as an officer leaving the bank and going to the customer's office and demanding additional security for a loan made earlier the same day, indicates knowledge of the impending bankruptcy of such customer. *Ib.*

15. *Preferences; knowledge; sufficiency of showing of.*
A notice to a bank demanding securities for a loan made to the bankrupt that bankruptcy was impending and that it was receiving a preference is sufficient to show that the bank had cause to believe that it was obtaining a preference. *National City Bank* v. *Hotchkiss*, 50.

16. *Suits against assignee; limitation provided by § 5057, Rev. Stat.; application of.*
Dushane v. *Beall*, 161 U. S. 513, followed, to effect that the two year limitation provided by § 5057, Rev. Stat., applies only to suits growing out of disputes in respect of property and of rights of property of the bankrupt which came to the hands of the assignee to which adverse claims existed while in the hands of the bankrupt and before assignment. (*Hammond* v. *Whittredge*, 204 U. S. 538.) *Yazoo & M. V. R. R. Co.* v. *Brewer*, 245.

17. *Limitation on right of trustee to attack sale made by bankrupt.*
After the estate has been closed and the two year period prescribed by § 11d of the Bankruptcy Act has run, the proceeding cannot be reopened on *ex parte* statements to enable the trustee to attack on the ground of fraud a sale made by the bankrupt, where, as in this case, the trustee had the opportunity of commencing an action for that purpose before the expiration of the period. *Kinder* v. *Scharff*, 517.

18. *Limitation prescribed by § 11d of act; power of court to remove bar.*
The bankruptcy court cannot under § 2 (8) remove the bar of § 11d at its own will simply because the trustee may have changed his mind and wishes to institute a suit which he might have instituted prior to the operation of § 11d. *Ib.*

19. *Vendor's right of recovery of goods consigned for sale on commission.*
A contract under which goods are delivered by one party to another to be sold by the latter and proceeds paid to the former less an agreed discount, the unsold goods to be returned to the consignor, is really a contract of bailment only, and the consignor can, in the absence of fraud, take them back in case of the consignee's bankruptcy. *Ludvigh* v. *American Woolen Co.*, 522.

See EVIDENCE, 3;
PRACTICE AND PROCEDURE, 3.

BANKS AND BANKING.

1. *Intent in transactions between bank and customer; attitude of courts.*
Courts may go far in giving financial transactions between banks and

customers any form which will carry out the mutually understood intent, *Sexton* v. *Kessler*, 225 U. S. 90; but if the intent is doubtful or inconsistent with the legal effect of dominant facts it will fail. *National City Bank* v. *Hotchkiss*, 50.

2. *Subrogation.*

Although a loan may be made for a specified purpose, if the lender places it in the stream of the borrower's general property there is no right of subrogation. *Ib.*

3. *Payment of taxes on deposits; effect of provision of state statute as duress.*

A provision in a statute permitting a bank to stipulate with the State to pay the taxes on deposits and thereby relieve its depositors from making returns does not place the bank under duress. *Clement National Bank* v. *Vermont*, 120.

See BANKRUPTCY, 8–15;
CONSTITUTIONAL LAW, 7;
NATIONAL BANKS.

BATTERIES.

See EMINENT DOMAIN.

BILLS AND NOTES.

1. *Consideration; pleading; burden of proof.*

While generally the payee of a note need not allege consideration in declaring upon it, if there is conflicting evidence he has the burden of proof. *Tinker* v. *Midland Valley Co.*, 681.

2. *Consideration; effect of excess of amount of note over what permitted by statute; quære as to.*

Quære, whether the fact that a note is very largely in excess of the amount permitted to be given by statute does not constitute a *prima facie* case against the holder even if the burden were not upon him. *Ib.*

See JURISDICTION, C 1, 3.

BONDS.

1. *Government contractor's; right of recovery under.*

A bond given pursuant to the act of August 13, 1894, c. 280, 28 Stat. 278, for a contract for building a stone breakwater, under the terms of this contract, covers claims for labor or work at the quarry and for hauling and delivering the stone. *United States Fidelity Co.* v. *Bartlett*, 237.

2. *Government contractor's; assigned claims; right of action on.*
Under the circumstances of this case *held* that the claims of laborers for wages had been properly assigned to the claimant and clothed him with legal right to maintain an action upon the bond given under the act of August 13, 1894. *Ib.*

3. *Government contractor's; against claim; fraud; sufficiency of showing.*
A claim against the surety on bond of a government contractor will not be rejected as fraudulently excessive where it is shown that claimant's books have been destroyed but he offers to allow credits properly shown on the contractor's books and the records do not disclose an attempt to recover more than the amount actually due. *Ib.*

4. *Government contractor's; suit against surety; laches.*
A claimant will not be charged with laches when the record does not disclose any delay which affected the relations of the parties or such that should relieve a surety from liability on the contractor's bond. *Ib.*

5. *Discharge of surety, extension of time of performance of contract.*
In this case, as the bond in terms contemplated an extension of time and the contract provided for modifications, the surety was not discharged by waiver of time limit or for modifications without its express consent. *Graham* v. *United States*, 474.

6. *Recovery in action on.*
An instruction that the Government was entitled to recover, in case of breach found, an amount, not exceeding the penalty of the bond, equal to the difference between the reasonable and necessary cost to it for transporting, cutting and delivering the granite mentioned in the case and the amount specified in the contract, *held* to have referred simply to the granite actually in controversy; and there being evidence in the case to warrant the finding, and as the measure followed the contract, a verdict for the amount was correct. *Ib.*

BURDEN OF PROOF.

See BILLS AND NOTES, 1, 2;
EVIDENCE;
INDIANS, 6.

CASES APPROVED.

Bridgeport Savings Bank v. *Feitner*, 191 N. Y. 88, approved in *Amoskeag Savings Bank* v. *Purdy*, 373.

CASES DISTINGUISHED.

Coyle v. *Oklahoma*, 221 U. S. 559, distinguished in *United States* v. *Sandoval*, 28.

Gorman v. *Littlefield*, 229 U. S. 19, distinguished in *National City Bank* v. *Hotchkiss*, 50.

International Text Book Co. v. *Pigg*, 217 U. S. 19, distinguished in *United States Fidelity Co.* v. *Kentucky*, 394; *New York Life Ins. Co.* v. *Deer Lodge County*, 495.

Lottery Cases, 188 U. S. 321, distinguished in *New York Life Ins. Co.* v. *Deer Lodge County*, 495.

People v. *Weaver*, 100 U. S. 539, distinguished in *Amoskeag Savings Bank* v. *Purdy*, 373.

Southern Railway Co. v. *Green*, 216 U. S. 400, distinguished in *Baltic Mining Co.* v. *Massachusetts*, 68.

United States v. *Joseph*, 94 U. S. 614, distinguished in *United States* v. *Sandoval*, 28.

United States v. *McMullen*, 222 U. S. 460, distinguished in *Graham* v. *United States*, 474.

United States ex rel. Taylor v. *Taft*, 203 U. S. 461, distinguished in *United States* v. *Antikamnia Co.*, 654.

Western Union Tel. Co. v. *Kansas*, 216 U. S. 1, distinguished in *Baltic Mining Co.* v. *Massachusetts*, 68.

CASES EXPLAINED.

Louisville v. *Cumberland Telephone Co.*, 225 U. S. 430, explained in *In re Louisville*, 639.

CASES FOLLOWED.

Adams v. *Russell*, 229 U. S. 358, followed in *DeBearn* v. *DeBearn*, 741.

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Allen v. *Southern Pacific R. R. Co.*, 173 U. S. 479, followed in *Roney* v. *Van Ness*, 737.

Anglo-Californian Bank v. *United States*, 175 U. S. 37, followed in *Pacific Creosoting Co.* v. *United States*, 737.

Aspen Mining Co. v. *Billings*, 150 U. S. 31, followed in *Roney* v. *Van Ness*, 737.

Bayard v. *Lombard*, 9 How. 530, followed in *Vicksburg* v. *Vicksburg Water Works Co.*, 740.

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Chicago, R. I. & P. Ry. Co. v. *Interstate Com. Comm.*, 218 U. S. 88, followed in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 736.
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Coyle v. *Smith*, 221 U. S. 559, followed in *John* v. *Paullin*, 583.
De Bearn v. *De Bearn*, 225 U. S. 695, followed in *Same* v. *Same*, 741.
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Dushane v. *Beall*, 161 U. S. 513, followed in *Yazoo & M. V. R. R. Co.* v. *Brewer*, 245.
Equitable Life Assurance Society v. *Brown*, 187 U. S. 308, followed in *Marshall* v. *Dye*, 250.
Eustis v. *Bolles*, 150 U. S. 361, followed in *De Bearn* v. *De Bearn*, 741; *Washington Dredging & Imp. Co.* v. *Washington*, 741.
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Farrell v. *O'Brien*, 199 U. S. 100, followed in *King* v. *Buskirk*, 735; *Zeller* v. *New Jersey*, 737.
Fay v. *Crozer*, 217 U. S. 455, followed in *King* v. *Buskirk*, 735.
Fisher v. *New Orleans*, 218 U. S. 438, followed in *Seattle & Renton Ry.* v. *Linhoff*, 568.
Flint v. *Stone-Tracy Co.*, 220 U. S. 107, followed in *United States* v. *Whitridge*, 144.
Foppiano v. *Speed*, 199 U. S. 501, followed in *Rabb* v. *Louisiana*, 740.
Fore River Shipbuilding Co. v. *Hagg*, 219 U. S. 195, followed in *Easton* v. *Chicago Hotel Co.*, 738.
Glickstein v. *United States*, 222 U. S. 139, followed in *Cameron* v. *United States*, 710.
Glos v. *Chicago*, 226 U. S. 599, followed in *Glos* v. *O'Connell*, 740.
Gunn v. *Barry*, 15 Wall. 610, followed in *Kener* v. *La Grange Mills*, 215.
Hamblin v. *Western Land Co.*, 147 U. S. 531, followed in *De Bearn* v. *De Bearn*, 741.
Hammond v. *Whittredge*, 204 U. S. 538, followed in *Yazoo & M. V. R. R. Co.* v. *Brewer*, 245.

Heike v. *United States*, 217 U. S. 423, followed in *Darsey* v. *Georgia*, 741.
Holden v. *Hardy*, 169 U. S. 366, followed in *Lee* v. *United States*, 735.
Home Telephone Co. v. *Los Angeles*, 211 U. S. 265, followed in *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.
Hurtado v. *California*, 110 U. S. 516, followed in *Zeller* v. *New Jersey*, 737.
Illinois Cent. R. R. Co. v. *Interstate Com. Comm.*, 206 U. S. 454, followed in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 736.
Indiana v. *Liverpool, L. & G. Ins. Co.*, 109 U. S. 168, followed in *Vicksburg* v. *Vicksburg Water Works Co.*, 740.
In re Louisville, 231 U. S. 639, followed in *Louisville* v. *Cumberland Telephone Co.*, 652.
Interstate Com. Comm. v. *Goodrich Transit Co.*, 224 U. S. 194, followed in *Kansas City Southern Ry. Co.* v. *United States*, 423.
Interstate Com. Comm. v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, followed in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 736.
Johannessen v. *United States*, 225 U. S. 227, followed in *Luria* v. *United States*, 9.
Joplin v. *Southwest Missouri Light Co.*, 191 U. S. 150, followed in *Glenwood Light & Water Co.* v. *Glenwood Springs*, 735.
Kelly v. *Pittsburgh*, 104 U. S. 80, followed in *New Louisville Jockey Club* v. *Oakdale*, 739.
King v. *Cornell*, 106 U. S. 395, followed in *Rainey* v. *W. R. Grace & Co.*, 703.
Knoxville Water Co. v. *Knoxville*, 200 U. S. 22, followed in *Glenwood Light & Water Co.* v. *Glenwood Springs*, 735.
Kuhn v. *Fairmont Coal Co.*, 215 U. S. 349, followed in *Aetna Life Ins. Co.* v. *Moore*, 543.
Louisville & Nashville R. R. Co. v. *Cook Brewing Co.*, 223 U. S. 70, followed in *Lee* v. *United States*, 735.
Louisville & Nashville R. R. Co. v. *Garrett*, 231 U. S. 298, followed in *Grand Trunk Ry.* v. *Michigan Railway Commission*, 457.
Louisville & Nashville R. R. Co. v. *Schmidt*, 177 U. S. 230, followed in *Torres* v. *Lothrop, Luce & Co.*, 171.
Louisville Trust Co. v. *Knott*, 191 U. S. 225, followed in *Easton* v. *Chicago Hotel Co.*, 738.
Lovell v. *Newman*, 227 U. S. 412, followed in *Lovell* v. *Hentz & Company*, 738.
McCune v. *Essig*, 199 U. S. 382, followed in *Buchser* v. *Buchser*, 157.
Macfadden v. *United States*, 213 U. S. 288, followed in *Vicksburg* v. *Henson*, 259; *Pacific Creosoting Co.* v. *United States*, 737.
Marshall v. *Dye*, 231 U. S. 250, followed in *Pullman Co.* v. *Croom*, 571.
Maxwell v. *Dow*, 176 U. S. 581, followed in *Zeller* v. *New Jersey*, 737.

Mercantile Bank v. *New York*, 121 U. S. 138, followed in *Amoskeag Savings Bank* v. *Purdy*, 373.
Merritt v. *Bowdoin College*, 169 U. S. 551, followed in *Kirkpatrick* v. *Harnesberger*, 736.
Michigan Central R. R. Co. v. *Powers*, 201 U. S. 245, followed in *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.
Minnesota Rate Cases, 230 U. S. 352, followed in *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.
Missouri, K. & T. Ry. Co. v. *May*, 194 U. S. 267, followed in *Missouri, K. & T. Ry. Co.* v. *Letot*, 738.
Mobile &c. R. R. Co. v. *Turnipseed*, 219 U. S. 35, followed in *Luria* v. *United States*, 9.
Mount Pleasant v. *Beckwith*, 100 U. S. 531, followed in *New Louisville Jockey Club* v. *Oakdale*, 739.
Mugler v. *Kansas*, 123 U. S. 623, followed in *Lee* v. *United States*, 735.
Murphy v. *Utter*, 186 U. S. 95, followed in *Marshall* v. *Dye*, 250.
National City Bank v. *Hotchkiss*, 231 U. S. 50, followed in *Mechanics' Bank* v. *Ernst*, 60; *Greey* v. *Dockendorff*, 513.
New York ex rel. Metropolitan Street Ry. v. *Tax Commissioners*, 199 U. S. 1, followed in *Trimble* v. *Seattle*, 683.
Norfolk Turnpike Co. v. *Virginia*, 225 U. S. 264, followed in *Mulcrevy* v. *San Francisco*, 669.
Northern Pacific Ry. Co. v. *Wass*, 219 U. S. 426, followed in *Northern Pacific Ry. Co.* v. *Houston*, 181.
North Missouri R. R. Co. v. *Maguire*, 20 Wall. 46, followed in *Clement National Bank* v. *Vermont*, 120.
Pacific Telephone Co. v. *Oregon*, 223 U. S. 118, followed in *Marshall* v. *Dye*, 250.
Paul v. *Virginia*, 8 Wall. 168, followed in *New York Life Ins. Co.* v. *Deer Lodge County*, 495.
Payne v. *Niles*, 26 How. 219, followed in *Vicksburg* v. *Vicksburg Water Works Co.*, 740.
Phoenix Railway Co. v. *Landis*, 231 U. S. 578, followed in *Work* v. *United Globe Mines*, 595.
Prentis v. *Atlantic Coast Line*, 211 U. S. 210, followed in *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.
Press Pub. Co. v. *Monroe*, 164 U. S. 105, followed in *Glenwood Light & Water Co.* v. *Glenwood Springs*, 735.
Preston v. *Chicago*, 226 U. S. 447, followed in *Washington Dredging & Imp. Co.* v. *Washington*, 742.
Price v. *United States*, 165 U. S. 311, followed in *Lee* v. *United States*, 735.
Procter & Gamble Co. v. *United States*, 225 U. S. 282, followed in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 736.

Reynolds v. *Stockton*, 140 U. S. 254, followed in *Radford* v. *Myers*, 725.
Rogers Locomotive Works v. *Emigrant Co.*, 164 U. S. 559, followed in *Little* v. *Williams*, 335.
Scarborough v. *Pargoud*, 108 U. S. 567, followed in *Roney* v. *Van Ness*, 737.
Schaefer v. *Werling*, 188 U. S. 516, followed in *Heavner* v. *Elkins*, 743.
Sexton v. *Kessler*, 225 U. S. 90, followed in *National City Bank* v. *Hotchkiss*, 50.
Shulthis v. *McDougal*, 225 U. S. 561, followed in *Glenwood Light & Water Co.* v. *Glenwood Springs*, 735.
Smith v. *Indiana*, 191 U. S. 138, followed in *Marshall* v. *Dye*, 250.
Smith v. *McKay*, 161 U. S. 355, followed in *Easton* v. *Chicago Hotel Co.*, 738.
Sohn v. *Waterson*, 17 Wall. 596, followed in *Union Pacific R. R. Co.* v. *Laramie Stock Yards*, 190.
Standard Oil Co. v. *Missouri*, 224 U. S. 271, followed in *Washington Dredging & Imp. Co.* v. *Washington*, 742.
Standard Sanitary Mfg. Co. v. *United States*, 226 U. S. 20, followed in *Straus* v. *American Publishers' Assn.*, 222.
Starr v. *Long Jim*, 227 U. S. 613, followed in *Monson* v. *Simonson*, 341.
Steinmetz v. *Allen*, 192 U. S. 543, followed in *United States* v. *Antikamnia Co.*, 654.
Swope v. *Leffingwell*, 105 U. S. 3, followed in *Glenwood Light & Water Co.* v. *Glenwood Springs*, 735.
Treat v. *Grand Canyon Ry. Co.*, 222 U. S. 448, followed in *Straus* v. *Foxworth*, 162.
Twining v. *New Jersey*, 211 U. S. 78, followed in *Zeller* v. *New Jersey*, 737.
Union Pacific R. R. Co. v. *Laramie Stock Yards*, 231 U. S. 190, followed in *Union Pacific R. R. Co.* v. *Snow*, 204.
Union Pacific R. R. Co. v. *Snow*, 231 U. S. 204, followed in *Union Pacific R. R. Co.* v. *Sides*, 213.
Union Trust Co. v. *Westhus*, 228 U. S. 519, followed in *Parker-Washington Co.* v. *Cramer*, 744.
United States v. *Bell Telephone Co.*, 128 U. S. 315, followed in *Luria* v. *United States*, 9.
United States v. *Boutwell*, 17 Wall. 604, followed in *Pullman Co.* v. *Croom*, 571.
United States v. *Congress Construction Co.*, 222 U. S. 199, followed in *Easton* v. *Chicago Hotel Co.*, 738.
United States v. *Kagama*, 118 U. S. 375, followed in *United States* v. *Sandoval*, 28.
United States v. *Staats*, 8 How. 41, followed in *United States* v. *Davis*, 183.

Washington & Georgetown R. R. Co. v. *Hickey*, 166 U. S. 521, followed in *Munsey* v. *Webb*, 150.
Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 86, followed in *Marshall* v. *Dye*, 250; *King* v. *Buskirk*, 735.
Williams v. *Paine*, 169 U. S. 55, followed in *Chavez* v. *Bergere*, 482.
Wisconsin &c. R. R. Co. v. *Jacobson*, 179 U. S. 287, followed in *Grand Trunk Ry.* v. *Michigan Railway Commission*, 457.
Wood v. *Chesborough*, 228 U. S. 672, followed in *De Bearn* v. *De Bearn*, 741; *Washington Dredging & Imp. Co.* v. *Washington*, 742.
Wright v. *Morgan*, 191 U. S. 55, followed in *Buchser* v. *Buchser*, 157.

CERTIFICATE.

See PRACTICE AND PROCEDURE, 1.

CERTIORARI.

See JURISDICTION, A 2, 3.

CHARTERS.

See RAILROADS, 1, 2.

CHILD LABOR.

See CONSTITUTIONAL LAW, 8, 16;
STATES, 7.

CITIZENSHIP.

Definition of.

Citizenship is membership in a political society and implies the reciprocal obligations as compensation for each other of a duty of allegiance on the part of the member and a duty of protection on the part of the society. *Luria* v. *United States*, 9.

See INDIANS, 5, 8;
JURISDICTION, C 3;
NATURALIZATION, 2, 3.

CLAIMS AGAINST THE UNITED STATES.

1. *Limitations; effect of back pay and bounty provision of act of March 4, 1907, to confer new cause of action.*

The proviso in the back pay and bounty provision in the Sundry Civil Appropriation Act of March 4, 1907, c. 2918, 34 Stat. 1295, 1356, directing accounting officers to follow decisions of this court and of the Court of Claims without regard to former settlements, did not confer a new cause of action upon the holders of other claims against the United States which had been adversely ruled upon

theretofore and remove the bar of the statute of limitations from such claims. *Pennington* v. *United States*, 631.

2. *Back pay and bounty provision of act of March 4, 1907; application of.*
The back pay and bounty provision in the Sundry Civil Appropriation Act of 1907 related to certain enumerated claims and the proviso also related exclusively to those claims and is not to be regarded as independent legislation. *Ib.*

3. *Administrative action as to; intent of Congress to unsettle.*
This court will not construe a provision in an appropriation act in regard to an enumerated class of claims as expressing the intent of Congress to unsettle past administrative action as to all claims against the Government; such a radical intent would not be expressed in an obscure and uncertain manner. *Ib.*

4. *Disallowed claims; effect of subsequent act of Congress to reinstate.*
A claim of an officer of the United States for extra *per diem* rations under the act of July 5, 1838, and which had been disallowed in 1890 by the accounting officers, was not reinstated by the proviso in the back pay and bounty provision of the Sundry Civil Appropriation Act of March 4, 1907. *Ib.*

See JURISDICTION, E.

CLASSIFICATION FOR REGULATION.

See CONSTITUTIONAL LAW, 16.

CLASSIFICATION FOR TAXATION.

See CONSTITUTIONAL LAW, 15;
NATIONAL BANKS, 8, 11.

CODES.

See STATUTES, A 2.

COMBINATIONS IN RESTRAINT OF TRADE.

See RESTRAINT OF TRADE.

COMMERCE.

See CONSTITUTIONAL LAW;
CUSTOMS LAW;
INTERSTATE COMMERCE.

COMMERCE COURT.

See JURISDICTION, F.

COMMERCIAL AGENCIES.
See INTERSTATE COMMERCE, 26, 27;
STATES, 8.

COMMODITIES CLAUSE.
See INTERSTATE COMMERCE, 11, 18, 19, 20.

COMMON CARRIERS.
1. *Depots and freight stations; creation by contract.*
Premises occupied and used by a common carrier as a depot or freight station may become such through contract with the owners and not necessarily by lease or purchase. *United States* v. *Baltimore & Ohio R. R. Co.*, 274.

2. *Status of owners of terminal as.*
Because a contract for terminal facilities contemplates and provides for the publication of joint tariffs does not make the owners of the terminal common carriers if no joint tariffs are ever filed or published. *Ib.*
See HOURS OF SERVICE LAW; SAFETY APPLIANCE ACT;
INTERSTATE COMMERCE; RAILROADS:
RATE REGULATION.

CONCLUSIONS OF LAW AND FACT.
See PLEADING, 1.

CONFISCATION.
See RATE REGULATION, 4, 5, 15, 16.

CONFLICT OF LAWS.
See BANKRUPTCY, 7;
STATUTES, A 15.

CONGRESS, ACTS OF.
See ACTS OF CONGRESS.

CONGRESS, POWERS OF.
1. *Indians; protectorate over.*
Congress may not bring a community or body of people within range of its power by arbitrarily calling them Indians; but in respect of distinctly Indian communities the questions whether and for how long they shall be recognized as requiring protection of the

United States are to be determined by Congress and not by the courts. *United States* v. *Sandoval*, 28.

2. *Indians; intoxicating liquors; validity of provision in New Mexico Enabling Act.*

It was a legitimate exercise of power on the part of Congress to provide in the Enabling Act under which New Mexico was admitted as a State against the introduction of liquor into the Indian country and the prohibition extends to lands owned by the Pueblo Indians in New Mexico. *Ib.*

See BANKRUPTCY, 7; CONSTITUTIONAL LAW, 19; CORPORATION TAX LAW, 9; INDIANS, 5, 7, 9; INTERSTATE COMMERCE, 17; JURISDICTION, G 1; STATES, 3, 4.

CONSIDERATION.

See BILLS AND NOTES, 1, 2.

CONSOLIDATION OF CAUSES.

See PRACTICE AND PROCEDURE, 26.

CONSTITUTIONAL LAW.

1. *Commerce; state burdens on; validity of Michigan act imposing tax on insurance corporations.*

The statute of Montana imposing a tax on insurance corporations doing business in the State measured by the excess of premiums received over losses and expenses incurred within the State, is not unconstitutional as a burden on, or interference with, interstate commerce. *New York Life Ins. Co.* v. *Deer Lodge Co.*, 495.

2. *Commerce clause; due process of law; validity of order of Michigan Railroad Commission.*

An order of the Michigan Railroad Commission requiring certain railroads doing an interstate business to use their tracks within the city limits of Detroit for the interchange of intrastate traffic, sustained as being within the regulating power of the commission; and also *held* that such order was not unconstitutional as interfering with interstate commerce or as depriving the carriers of their property without due process of law. *Grand Trunk Ry.* v. *Michigan R. R. Comm.*, 457.

3. *Commerce clause; due process and equal protection of the laws; validity of Part III of c. 490 of Stat. Mass., 1909, imposing excise tax on foreign corporations.*

The excise tax, imposed by Part III of c. 490 of the Statutes of Massachusetts of 1909, on certain classes of foreign corporations, which

excise is measured by the authorized capital of such corporations but limited to a specified sum, is not an unconstitutional burden on interstate commerce, nor does it deprive such corporations of their property without due process of law or deny them the equal protection of the law. *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1; *Southern Railway Co.* v. *Green*, 216 U. S. 400, distinguished. *Baltic Mining Co.* v. *Massachusetts*, 68.

4. *Commerce clause; Indian tribes; scope of power and duty of United States.*

The power and duty of the United States under the Constitution to regulate commerce with the Indian tribes includes the duty to care for and protect all dependent Indian communities within its borders, whether within its original limits or territory subsequently acquired and whether within or without the limits of a State. (*United States* v. *Kagama*, 118 U. S. 375.) *United States* v. *Sandoval*, 28.

See INTERSTATE COMMERCE.

5. *Contract impairment; effect of subsequent state law on charter provision.*

A charter provision is not violated under the contract clause by a subsequent state law otherwise legal, if, prior to the enactment of the latter, the chartered corporation has subjected itself to the operation of an amendment to the state constitution reserving the power to alter, amend and repeal charters and franchises. *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.

6. *Contract clause; order of railroad commission as law of State within meaning of.*

An order of the Railroad Commission of Kentucky made under the act of March 10, 1900, is a legislative act under delegated power and has the same force as if made by the legislature and is for this reason a law passed by the State within the meaning of the contract clause of the Federal Constitution. *Ib.*

7. *Contract impairment; effect on contract between bank and depositor of state statute requiring bank to act as agent of State in collecting tax on deposits.*

A lawful state tax on deposits in bank is imposed in the exercise of a power subject to which deposits are made, and does not impair the contract obligation of the bank to the depositors by requiring the bank to act as agent in collecting it. (*North Missouri R. R. Co.* v. *Maguire*, 20 Wall. 46.) *Clement National Bank* v. *Vermont*, 120.

See INFRA, 8;
TAXES AND TAXATION, 6.

Delegation of legislative power.—*See* INTERSTATE COMMERCE, 29.

8. *Due process of law; equal protection; liberty of contract; validity, under constitutional provisions, of Child Labor Act of Illinois of 1903.*

The provisions of the Child Labor Act of Illinois of 1903 involved in this case are not unconstitutional as denying due process of law, as depriving the employer of liberty of contract, or of his property by requiring him at his peril to ascertain the age of the person employed, or as denying him the equal protection of the law. *Sturges & Burn Mfg. Co.* v. *Beauchamp*, 320.

9. *Due process of law; effect, as deprivation of liberty or property, of state statute requiring employers to ascertain age of employés of tender years.*

Absolute requirements as to ascertaining age of employés of tender years are a proper exercise of the protective power of government; and if the legislation has reasonable relation to the purpose which the State is entitled to effect it is not an unconstitutional deprivation of liberty or property without due process of law. *Ib.*

10. *Due process of law; effect to control forms of procedure.*

The due process clause of the Federal Constitution does not control mere forms of procedure provided only the fundamental requirements of notice and opportunity to defend are afforded. (*Louisville & Nashville R. R. Co.* v. *Schmidt*, 177 U. S. 230.) *Torres* v. *Lothrop, Luce & Co.*, 171.

11. *Due process of law; retrospective legislation; validity of law of New Mexico correcting irregularities in compliance with statutory provisions in regard to tax sales.*

A statute correcting irregularities in compliance with statutory provisions in regard to tax sales is remedial in nature and unless violative of constitutional restrictions is not a denial of due process of law as retrospective legislation; and so *held* as to § 25 of c. 22 of the laws of New Mexico of 1899, providing that sales for taxes made under that act shall not be invalidated except on the ground of prior payment of the taxes or exemption of the property from taxation. *Straus* v. *Foxworth*, 162.

12. *Due process of law; effect of want of notice to depositor on validity of tax on deposits paid by bank under agreement with State.*

A state tax of a specified per cent. on deposits in national banks paid by the bank under agreement with the State pursuant to statute and which is otherwise valid, does not amount to denial of due process of law because the depositor had no notice in advance of the assessment, where, as in this case, the tax was recoverable by suit

in which the depositor would have full opportunity to resist any illegal demand. *Clement National Bank* v. *Vermont*, 120.

13. *Due process of law; effect to deny, of changes in rules of evidence.*

The right to have one's controversy determined by existing rules of evidence is not a vested right and a reasonable change of such rules does not deny due process of law. *Luria* v. *United States*, 9.

14. *Due process of law; effect to deny, of establishment of presumption from facts.*

The establishment of a presumption from certain facts prescribes a rule of evidence and not one of substantive right; and if the inference is reasonable and opportunity is given to controvert the presumption, it is not a denial of due process of law, *Mobile &c. R. R. Co.* v. *Turnipseed*, 219 U. S. 35, even if made applicable to existing causes of action. *Ib.*

See SUPRA, 2, 3; NATURALIZATION, 8; INTERSTATE COMMERCE, 3, 5; RATE REGULATION, 1, 2.

15. *Equal protection of the law; effect to deny, of classification for taxation of interest-bearing and non-interest-bearing deposits in bank.*

A state tax on interest-bearing deposits in national banks does not deny equal protection of the law on account of exemptions which it is within the power of the State to allow or on account of the exemption of non-interest-bearing accounts. The classification is reasonable. *Clement National Bank* v. *Vermont*, 120.

16. *Equal protection of the laws; validity of classification in employment of labor.*

A classification in employment of labor of persons below sixteen years of age is reasonable and does not deny equal protection of the laws. *Sturges & Burn Mfg. Co.* v. *Beauchamp*, 320.

17. *Equal protection of the law; effect to deny, of compelling lessee of State to pay taxes.*

Whether landlords or tenants shall pay taxes and assessments on leased property is a matter of private arrangement, and compelling tenants of the State to pay them does not deny them equal protection of the law because there may be a practice the other way in private leases. *Trimble* v. *Seattle*, 683.

18. *Equal protection of the law; effect to deny, of exemption from taxation; quære as to.*

Quære, whether exemption from taxation would not create a favored class and thus deny equal protection to other property owners. *Ib.*

See SUPRA, 3, 8, 15; TAXES AND TAXATION, 2.

19. *States; republican form of government; enforcement of guarantee of Art. IV, § 4.*

The enforcement of the provision in Article IV, § 4 of the Constitution, that the United States shall guarantee to every State in the Union a republican form of government, depends upon political and governmental action through the powers conferred on the Congress and not those conferred on the courts. (*Pacific Telephone Co.* v. *Oregon*, 223 U. S. 118.) *Marshall* v. *Dye*, 250.

See STATES.

Generally.—*See* NATURALIZATION, 7.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTRACTS.

1. *Ambiguities; proof to dispel.*

In this case there was such ambiguity in the contract involved as justified proof beyond the terms of the instrument to clear up the situation, and findings of the trial court based upon such proof are not void because of want of power to consider it. *Van Syckel* v. *Arsuaga*, 601.

2. *Government; breach; accrual of right of action for.*

Where the contractor refuses to go on with the work there is no question of revision of judgment of an officer annulling the contract, and a right of action accrues to the Government without need of any useless ceremony of approval by the superior officer or board. *United States* v. *McMullen*, 222 U. S. 460, distinguished. *Graham* v. *United States*, 474.

3. *Government; responsibility for delay.*

Under a contract that the Government would furnish the contractor with granite blocks free on board cars at the quarry, he to transport them, *held* that the contractor was to furnish the cars and was responsible for delay in that respect. *Ib.*

4. *Government; purchase of land; implication.*

A contract with the Government to take and pay for property cannot be implied unless the property has been actually appropriated. *Peabody* v. *United States*, 530.

5. *Nature of instrument as contract to convey and not conveyance.*

Although containing some words adapted to a present transfer, if the instrument taken in its entirety shows that it was a mere contract

to convey upon a specified contingency it will be construed as such and not as a conveyance. (*Williams* v. *Paine*, 169 U. S. 55.) *Chavez* v. *Bergere*, 482.

6. *For purchase of land on condition that Mexican grant be confirmed; right of recovery by one in possession on rejection of grant.*

Where an alleged Mexican grant was rejected, one who was in possession under a contract to purchase the same if confirmed, and who thereafter acquired portions thereof under the public land laws, was not obliged to surrender such portions in order to recover what he had paid his vendor on account of the contract to purchase the entire tract. *Ib.*

7. *Intention of parties in contract for purchase of Mexican grant.*

Manifest intention of the parties must be given full effect; and so *held* that approval by the Surveyor General of a Mexican grant referred to the approval of the grant by the proper authority. *Ib.*

See BANKRUPTCY, 19;
BONDS;
CONSTITUTIONAL LAW, 5, 6, 7;
COPYRIGHTS;
INSURANCE, 2, 3, 7, 8;
INTERSTATE COMMERCE, 21;
JURISDICTION, E 3;
PRACTICE AND PROCEDURE, 23;
TAXES AND TAXATION, 6;
VENDOR AND VENDEE.

CONTROVERSIES BETWEEN STATES.

See STATES, 1, 2.

CONVEYANCES.

See CONTRACTS, 5;
INDIANS, 1–4;
MORTGAGES AND DEEDS OF TRUST;
PUBLIC LANDS, 1.

COPYRIGHTS.

Monopoly conferred by act; conflict with Sherman Act.

No more than the patent statute was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly in violation of the Sherman Act. *Straus* v. *American Publishers' Ass'n*, 222.

See RESTRAINT OF TRADE, 2.

CORPORATIONS.

See CONSTITUTIONAL LAW, 3, 5;
CORPORATION TAX LAW;
STATES, 5, 6.

CORPORATION TAX LAW.

1. *Application generally.*
The Corporation Tax Law deals with corporations engaged in actual business transactions and presumably conducted according to business principles. *Stratton's Independence* v. *Howbert*, 399.

2. *Application to mining corporations.*
The Corporation Tax Law of August 5, 1909, c. 6, 36 Stat. 11, applies to mining corporations. *Ib.*

3. *Application to mining corporations.*
The process of mining ores is in a sense a manufacturing process and is a business within the Corporation Tax Law of 1909. *Ib.*

4. *Nature of tax imposed by.*
The Corporation Tax Law of 1909 was enacted before the adoption of the Sixteenth Amendment and was not intended as, nor was it in any sense, an income tax; but it was an excise tax for the conduct of business in a corporate capacity measured by the income with certain qualifications prescribed by the act itself. *Ib.*

5. *Nature of tax imposed by.*
The Corporation Tax Law of 1909 was adopted before the ratification of the Sixteenth Amendment and imposed an excise tax on the doing of business by corporations, and not in any sense a tax on property or upon income merely as such. (*Flint* v. *Stone-Tracy Co.*, 220 U. S. 107.) *United States* v. *Whitridge*, 144.

6. *Scope of tax imposed by.*
The Corporation Tax Law does not in terms impose a tax upon corporate property or franchises as such, nor upon the income arising from the conduct of business unless it be carried on by the corporation. *Ib.*

7. *Effect to reach income from management by receivers.*
The act of August 5, 1909, c. 6, § 38, 36 Stat. 11, 112, does not impose a tax upon the income derived from the management of corporate property by receivers under the conditions of this case. *Ib.*

8. *Income defined.*
Income may be defined as the gain derived from capital, from labor, or from both combined. *Stratton's Independence* v. *Howbert*, 399.

9. *Income; power of Congress to fix.*
In fixing the income by which the excise on conducting business should be measured, Congress has power to fix the gross income even though such income involved a wasting of the capital as in mining ores. *Ib.*

10. *Income within meaning of.*
Income, within the meaning of the Corporation Tax Law of 1909, includes the proceeds of ores mined by a corporation from its own premises. *Ib.*

11. *Depreciation within meaning of; ore in place as.*
A corporation mining ores from its own premises is not entitled, under the facts certified in this case, to deduct the value of such ore in place and before it is mined as depreciation within the meaning of the Corporation Tax Law of 1909. *Ib.*

12. *Depreciation; computation in case of mining company.*
Whatever may be the proper method of computing depreciation under the Corporation Tax Law by reason of taking ore from the premises of a mining corporation, the rules applicable to liability of trespassers for taking ore have only a modified application thereto. *Ib.*

COSTS.

See JURISDICTION, C 1.

COUNTY CLERKS.

See NATURALIZATION, 10, 11.

COURT AND JURY.

See HOURS OF SERVICE LAW, 5;
INSTRUCTIONS TO JURY.

COURT OF CLAIMS.

See JURISDICTION, E.

COURTS.

1. *Judges; liability to civil action.*
Judges of United States courts are not liable to civil actions for their judicial acts. (*Bradley* v. *Fisher*, 13 Wall. 335.) *Alzua* v. *Johnson*, 106.

2. *Judges; liability to civil action; effect of Act 190 of Philippine Commission.*
Act No. 190 of the Philippine Commission did not impose any liability

to civil actions for official acts on any judge of the Supreme Court of the Philippine Islands; that act related only to inferior judges. *Ib.*

3. *Judges; liability to civil action; construction of statutes.*
A statute, such as that involved in this case, providing that no judge shall be liable to civil action for official acts done in good faith, will not be construed as rendering such judges liable to civil action for acts done in bad faith by implication. *Ib.*

4. *Judges; immunity from civil action; Philippine Islands.*
The principle of immunity of judges from civil action for their official acts is so deep seated in the system of American jurisprudence that this court will regard it having been carried into the Philippine Islands as soon as the American courts were established therein. *Ib.*

5. *Judges; immunity from civil action; Philippine Islands.*
The immunity of judges of the Supreme Court of the Philippine Islands from civil actions for official acts is the same as that of judges of the United States. *Ib.*

6. *Interference with laws of State; reluctance as to.*
Courts are reluctant to interfere with the laws of a State or with the tribunals constituted to enforce them; doubts will not be resolved against the law. *Grand Trunk Ry.* v. *Michigan R. R. Comm.*, 457.

7. *Jurisdiction; determination of.*
The state court, and not this court, is the judge of its own jurisdiction. *Seattle & Renton Ry.* v. *Linhoff*, 568.

8. *Territorial; status of.*
The fact that the courts of Territories may have such jurisdiction of cases arising under the Constitution and laws of the United States as that vested in the circuit and district courts does not make them circuit and district courts of the United States. *Summers* v. *United States*, 92.

See BANKRUPTCY, 18;
BANKS AND BANKING, 1;
CONGRESS, POWERS OF, 1;
CONSTITUTIONAL LAW, 19;
MANDAMUS;
PHILIPPINE ISLANDS;
RAILROADS, 4;
RATE REGULATION, 2, 3, 9, 10, 11, 14;
STATUTES, A 8;
UNITED STATES.

CRIMINAL APPEALS ACT.

See JURISDICTION, A 4–7.

CRIMINAL LAW.

1. *Amendment of law pending appeal; effect on right of accused.*

Fault cannot be imputed by the appellate court to the accused for standing on a right under the law as it existed at the time of the trial because the law has been so amended meanwhile as to eliminate such right. *Summers* v. *United States*, 92.

2. *Indictment; sufficiency of one good count to support conviction.*

The principle that one good count will support a judgment of conviction does not apply where the accused has the right to defend against the validity of the indictment for joining the counts and this right has not been lost by failure to plead the defect. *Ib.*

3. *Fraudulent claims to public lands; documents embraced within § 29 of Penal Code.*

Section 29 of the Penal Code is practically a reproduction of § 5421, Rev. Stat., which in turn represents § 1 of the act of March 3, 1823, c. 38, 3 Stat. 771, and this court follows the construction already given by this court to the last named statute to the effect that it embraces fraudulent documents as well as those that are forged or counterfeited. (*United States* v. *Staats*, 8 How. 41.) *United States* v. *Davis*, 183.

4. *Same; documents embraced within § 5421, Rev. Stat.*

The enumeration of certain classes of forged and false documents in § 5421, Rev. Stat., does not exclude other fraudulent documents which might be used to perpetrate the wrong which it is the purpose of the statute to prevent. *Ib.*

5. *Penalties and forfeitures; coincidence.*

While punishment for crime and forfeiture of goods affected by the crime are often coincident, they are not necessarily so, and inability to reach the criminal is a reason for subjecting the goods to forfeiture. *United States* v. *25 Packages of Panama Hats*, 358.

See BANKRUPTCY, 2;
LOCAL LAW (Alaska);
STATUTES, A 2.

CUSTOM AND USAGE.

See SAFETY APPLIANCE ACT, 3.

CUSTOMS LAW.

1. *Attempt to introduce into commerce of the United States; scope of expression as used in act of 1909.*

The expression—to attempt to introduce into the commerce of the United States—includes more than to attempt to enter merchandise, and as used in the act of August 5, 1909, c. 6, 36 Stat. 11, 97, it covers fraudulent invoices made by consignors in foreign countries. *United States* v. *25 Packages of Panama Hats*, 358.

2. *Forfeiture of goods for attempt to fraudulently introduce into commerce of United States.*

As statutes have no extraterritorial operation, a consignor making a fraudulent invoice in a foreign country cannot be punished therefor, but the goods being within the protection and subject to the commercial regulations of this country can be subjected to forfeiture for the fraudulent attempt to introduce them. *Ib.*

3. *Knowledge imputed to foreign consignor.*

A foreign consignor is charged with knowledge of the regulations of the United States in regard to importation of goods and their disposition in case they are not called for after removal from the vessel. *Ib.*

4. *General Order; placing of goods in; effect of, as introduction into commerce.*

When goods are unloaded and placed in General Order they are actually introduced into the commerce of the United States within the meaning of the statute intending to prevent fraud on the customs. *Ib.*

DAMAGES.

See BONDS, 6;
EMINENT DOMAIN, 1;
NEGLIGENCE, 3.

DEATH OF PARTY.

See ACTIONS.

DEBTOR AND CREDITOR.

See BANKRUPTCY;
INDIANS, 6.

DELEGATION OF POWER.

See INTERSTATE COMMERCE, 29;
PURE FOOD AND DRUGS ACT.
RATE REGULATION, 12.

DESCENT AND DISTRIBUTION.

See PUBLIC LANDS, 2.

DISTRICT OF COLUMBIA.

See JURISDICTION, A 8.

DRUGS.

See PURE FOOD AND DRUGS ACT.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW, 2, 3, 8–14; NATURALIZATION, 8;
INTERSTATE COMMERCE, 3, 5; RATE REGULATION, 1, 2.

DURESS.

See BANKS AND BANKING, 3.

EJECTMENT.

1. *Adverse possession; what constitutes.*

Possession by the vendee under an uncompleted contract to purchase is not adverse to the vendor, nor does it become so until after unequivocal repudiation of the relation created by the contract. *Chavez* v. *Bergere*, 482.

2. *Adverse possession; demand for surrender as prerequisite to right of action.*

Where a contract to purchase under which the vendee is in possession is terminated by an event which renders it impossible for the vendee to complete, his continued possession thereafter is without right and if he sets up an adverse right in himself demand for surrender is not a prerequisite to maintenance of ejectment. *Ib.*

3. *Estoppel to question title of vendor.*

In ejectment, defendants who acquired possession as conditional vendees of the plaintiff are estopped from calling in question the title of the latter. *Ib.*

ELEVATORS.

See NEGLIGENCE, 1, 2, 4.

EMINENT DOMAIN.

1. *What constitutes taking within Fifth Amendment; effect of discharge over land of heavy guns.*

The subjection of land to the burden of governmental use by constantly discharging heavy guns from a battery over it in time of peace in such manner as to deprive the owner of its profitable use would constitute such a servitude as would amount to a taking of the property within the meaning of the Fifth Amendment and not merely a consequential damage. *Peabody* v. *United States*, 530.

2. *What amounts to taking; effect of location of battery.*

The mere location of a battery is not an appropriation of property within the range of its guns. *Ib.*

3. *What amounts to a taking for military purposes.*

Where it appears that the guns in a battery have not been fired for more than eight years, and the Government denies that it intends to fire the guns over adjacent property except possibly in time of war, this court will not say that the Government has taken that property for military purposes. *Ib.*

4. *Action to recover for taking; showing to support.*

In order, however, to maintain an action for such a taking it must appear that the servitude has actually been imposed on the property. *Ib.*

See CONTRACTS, 4.

EMPLOYER AND EMPLOYÉ.

See CONSTITUTIONAL LAW, 8, 9; SAFETY APPLIANCE ACT; HOURS OF SERVICE LAW; STATES, 7.

ENABLING ACTS.

See STATES, 3, 4.

EQUAL PROTECTION OF THE LAW.

See CONSTITUTIONAL LAW, 3, 8, 15; TAXES AND TAXATION, 2.

ESTATES.

See TAXES AND TAXATION, 1, 2.

ESTOPPEL.

See BANKRUPTCY, 6; INSURANCE, 1; EJECTMENT, 3; RES JUDICATA.

EVIDENCE.

1. *Burden of proof; order of pleading; effect of.*

The order of pleading does not always determine the burden of proof. *Tinker* v. *Midland Valley Co.*, 681.

2. *Immunity of witness under § 860, Rev. Stat.*

Section 860, Rev. Stat., although repealed before testimony was used, if in force when the testimony was given, protected the giver thereof from having it used against him in a criminal proceeding. *Cameron* v. *United States*, 710.

3. *Immunity of witness under § 860, Rev. Stat.; bankrupt within.*

The use of testimony given by the bankrupt in a hearing before a commissioner to contradict his testimony given before the referee, in a trial on an indictment for perjury in giving the latter testimony, violates the immunity guaranteed under § 860, Rev. Stat., and the use thereof is reversible error. *Ib.*

See BANKRUPTCY, 1, 2;
BILLS AND NOTES;
CONSTITUTIONAL LAW, 13, 14;
CONTRACTS, 1;
EMINENT DOMAIN, 4;
LIBEL AND SLANDER;
LOCAL LAW (Porto Rico);
NATURALIZATION, 5, 6, 8;
RATE REGULATION, 4, 5, 15, 16;
TRUSTS.

EXAMINATION OF BANKRUPT.

See BANKRUPTCY, 1, 2.

EXCISE TAXES.

See CONSTITUTIONAL LAW, 3;
CORPORATION TAX LAW, 4, 5;
STATES, 6, 8.

EXECUTIVE DEPARTMENTS.

See PURE FOOD AND DRUGS ACT, 2.

EXEMPTIONS.

See BANKRUPTCY, 7;
CONSTITUTIONAL LAW, 18.

FACTS.

See PRACTICE AND PROCEDURE, 1, 2, 13.

FALSE REPRESENTATIONS.

See INSURANCE, 4, 5, 6.

FEDERAL QUESTION.

Frivolousness.

In this case the question of authority of the officers to whom the power to make regulations is delegated by the Food and Drugs Act is substantial and not frivolous. *United States* v. *Grimaud*, 220 U. S. 506, distinguished. *United States* v. *Antikamnia Co.*, 654.

FEE BILL.

See APPEAL AND ERROR, 6, 7.

FEES.

See NATURALIZATION, 10, 11.

FIFTH AMENDMENT.

See EMINENT DOMAIN, 1;
INTERSTATE COMMERCE, 5, 19.

FOOD AND DRUGS ACT.

See PURE FOOD AND DRUGS ACT.

FOREIGN CORPORATIONS.

See CONSTITUTIONAL LAW, 3;
STATES, 5, 6.

FORMS OF PROCEDURE.

See CONSTITUTIONAL LAW, 10.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW;
JURISDICTION, A 17;
RATE REGULATION, 1, 2.

FRANCHISES.

See MUNICIPAL CORPORATIONS.

FRAUD.

Effect as, of seeking to keep alive instrument in order to protect legal rights in litigation.

The mere fact that parties seek in a lawful mode to protect legal rights by keeping alive an instrument under which possession to the property could be maintained in case of adverse decision in suits under

another instrument does not indicate fraud in the transaction. *Van Syckel* v. *Arsuaga*, 601.

See BANKRUPTCY, 17;
BONDS, 3;
CUSTOMS LAW, 1, 2.

FRAUDULENT DOCUMENTS.

See CRIMINAL LAW, 3, 4.

GARNISHMENT.

See TAXES AND TAXATION, 7.

GOVERNMENT CONTRACTS.

See BONDS;
CONTRACTS, 2, 3, 4.

HEPBURN ACT.

See INTERSTATE COMMERCE.

HOMESTEADS.

See BANKRUPTCY, 7;
PUBLIC LANDS, 1, 2.

HOURS OF SERVICE LAW.

1. *Penalties under, where several employés detained by same delay of train.*

Under the Hours of Service Act of March 4, 1907, c. 2939, 34 Stat. 1415, when several employés are kept on duty beyond the specified time of sixteen hours, a separate penalty is incurred for the detention of each employé although by reason of the same delay of a train. *Missouri, K. & T. Ry. Co.* v. *United States*, 112.

2. *Sources of danger recognized by.*

Each overworked railroad employé presents towards the public a distinct source of danger. *Ib.*

3. *Wrong for which remedy provided.*

The wrongful act under the statute is not the delay of the train but the retention of the employé; and the principle that under one act having several consequences which the law seeks to prevent there is but one liability attached thereto does not apply. *Ib.*

4. *On duty within meaning of.*

An employé, who is waiting for the train to move and liable to be called and who is not permitted to go away, is on duty under the Hours of Service Act. *Ib.*

5. *Penalties; nature and determination of.*
The penalty under the Hours of Service Act, not being in the nature of compensation to the employé but punitive and measured by the harm done, is to be determined by the judge and not by the jury. ***Ib.***

IMMUNITY OF WITNESSES.
See BANKRUPTCY, 2;
EVIDENCE, 2, 3.

IMPAIRMENT OF CONTRACT OBLIGATION.
See CONSTITUTIONAL LAW, 5–8.

IMPORTS.
See CUSTOMS LAW.

INCOME.
See CORPORATION TAX LAW, 8, 9.

INDEXING RECORD.
See APPEAL AND ERROR, 6, 7.

INDIANS.
1. *Allotments; restrictions on alienation; Sisseton and Wahpeton Indians.*
Restrictions on alienation imposed by § 5 of the act of February 8, 1887, 24 Stat. 388, c. 119, on an allotment to a Sisseton and Wahpeton Indian remained until the actual issuing of patent carrying full and unrestricted title, and were not removed instantly on its passage by an act of Congress permitting the Secretary of the Interior to issue such a patent. *Monson* v. *Simonson*, 341.

2. *Allotments; restrictions on alienation; effect of act of Congress authorizing the shortening of period.*
An act of Congress authorizing and empowering the Secretary of the Interior to shorten the period of alienation of an Indian allotment construed in this case as being permissive only and not effecting the removal of the restrictions prior to the actual issuing of the patent by the Secretary. *Ib.*

3. *Allotments; restrictions on alienation; invalidity of deed made before final patent.*
A deed by an Indian of an allotment subject to restrictions on alienation is absolutely void if made before final patent, even if made after passage of an act of Congress permitting the Secretary of the

Interior to issue such patent; nor does the unrestricted title subsequently acquired by the allottee under the patent inure to the benefit of the grantee. (*Starr* v. *Long Jim*, 227 U. S. 613.) *Ib.*

4. *Allotments; effect of state statute to make valid deed void under Federal law.*

A state statute cannot made a deed the basis of subsequently acquired title to Indian allotment lands when the Federal statute has pronounced such a deed entirely void. *Ib.*

5. *Citizenship; effect on power of Congress.*

The fact that Indians are citizens is not an obstacle to the exercise by Congress of its power to enact laws for the benefit and protection of tribal Indians as a dependent people. *United States* v. *Sandoval*, 28.

6. *Credit to; limitation in act of June 21, 1906; burden of proof.*

Under the provision in the Indian Appropriation Act of June 21, 1906, c. 3504, 34 Stat. 325, 366, making it unlawful for traders on the Osage Indian Reservation to give credit to any individual Indian head of a family for any amount exceeding seventy-five per centum of his next quarterly annuity, the burden of proof is on the person taking and attempting to enforce a note to bring his claim within the permission of the statute. *Tinker* v. *Midland Valley Co.*, 681.

7. *Pueblos in New Mexico; status; power of Congress in respect of intoxicating liquors.*

The status of the Pueblo Indians in New Mexico and their lands is such that Congress can competently prohibit the introduction of intoxicating liquors into such lands notwithstanding the admission of New Mexico to statehood. *United States* v. *Sandoval*, 28.

8. *Pueblos of New Mexico; citizenship of; quære as to.*

Quære, and not decided, whether the Pueblo Indians of New Mexico are citizens of the United States. *Ib.*

9. *Pueblos; power of Congress to exclude liquor from lands of; title of Indians.*

Congress has power to exclude liquor from the lands of the Pueblo Indians, for although the Indians have a fee simple title, it is communal, no individual owning any separate tract. *United States* v. *Joseph*, 94 U. S. 614, distinguished. *Ib.*

See CONGRESS, POWERS OF, 1, 2;
CONSTITUTIONAL LAW, 4;
PRACTICE AND PROCEDURE, 18.

INDICTMENT AND INFORMATION.

See CRIMINAL LAW, 2; LOCAL LAW (Alaska);
JURISDICTION, A 4, 5, 6; PRACTICE AND PROCEDURE, 14.

INJUNCTION.

See ACTIONS, 4, 6;
JURISDICTION, C 4; F;
PARTIES, 1, 2, 3.

INSTRUCTIONS TO JURY.

1. *Error not prejudicial where jury not misled.*

Where the case was tried throughout on the proper theory of the statute, the fact that the court in its charge may have used some terms that were technically inappropriate *held* not to be ground for reversal as the jury could not have been misled thereby. *Phœnix Ry. Co.* v. *Landis*, 578.

2. *Adequacy and fairness in suit on bond.*

In Federal courts the judge and jury are assumed to be competent to play their respective parts; and *held* that the charge to the jury in this case as to the meaning of the phrase "net dimension blocks" was adequate and fair. *Graham* v. *United States*, 474.

See PRACTICE AND PROCEDURE, 31.

INSURANCE.

1. *Agent's knowledge; effect to estop principal.*

Where the policy itself expressly provides that it cannot be varied by anyone except an officer of the company issuing it, the company is not estopped to contest the policy on the ground of misrepresentations or concealment in the application because its agent has knowledge of actual conditions. *Prudential Ins. Co.* v. *Moore*, 560.

2. *Agreements in policy; right of applicant to make.*

Applicants for insurance are competent to make agreements in the policy that no person other than the executive officers of the company can vary its terms, and such an agreement is binding when made. *Aetna Life Ins. Co.* v. *Moore*, 543.

3. *Law governing contracts of; Georgia law.*

The character of the covenants of a contract for life insurance depends upon the law of the State where made. The Code of Georgia expressly provides that the application must be made in good faith and that the representations are covenanted by the applicant as true, and any variations changing the character of the risk will void the policy. *Ib.*

4. *Representations; materiality and falsity; sufficiency of showing to void policy.*

In order for an insurance company, defending on the ground of false statements in the application, to have a verdict directed, it must establish that the representations were material to the risk and were untrue. *Ib.*

5. *Representation as to former rejection; falsity of.*

A representation that the applicant for insurance has never been rejected by any company, association or agents is material to the risk and is not true if he has withdrawn an application at the suggestion of the medical adviser, and with the knowledge that the company to whom the application was made was about to reject it. *Ib.*

6. *Representation as to former rejection; falsity of.*

Aetna Insurance Co. v. *Moore, ante*, p. 543, followed to effect that it was error not to charge the jury that a statement made by an applicant for life insurance that he had never been rejected by any company, association or agent after he had withdrawn an application on the advice of the medical adviser with knowledge that the company for whom the examination was made would reject him, is material and untruthful. *Prudential Ins. Co.* v. *Moore*, 560.

7. *Georgia law as to contracts of.*

The law of Georgia as determined by its highest court, prior to the adoption of the Code, was that insurer and insured may make their own contract and determine what representations are material. *Aetna Life Ins. Co.* v. *Moore*, 543.

8. *Georgia law as to contracts of; effect of immaterial matters as warranties.*

The highest court of Georgia has decided that mere immaterial matters, although declared to be warranties, do not void a policy even though the policy declares them to be such, and that under the Code the parties themselves could not contract to make immaterial matter material. *Ib.*

See CONSTITUTIONAL LAW, 1;
INTERSTATE COMMERCE, 9, 10, 28.

INTERSTATE COMMERCE.

1. *Accounting by carriers; § 20 of Act to Regulate as amended.*

In enacting the Hepburn Act amending § 20 of the Act to Regulate Commerce, Congress recognized the essential distinctions between property accounts and operating accounts, and between capital and earnings, and that while prior to that time the practice of

different carriers varied, uniformity in regard to the keeping of accounts was essential in the future for proper supervision and regulation. *Kansas City Southern Ry. Co.* v. *United States*, 423.

2. *Accounts; classification adopted by Commission; abuse of power in.*
The classification of accounts adopted by the Interstate Commerce Commission in regard to additions and betterments and to property and operating accounts are not so arbitrary or so entirely at odds with fundamental principles of correct accounting as to amount to an unconstitutional abuse of power. *Ib.*

3. *Accounts; constitutional validity of Commission's system of accounting.*
In this case the carrier was not deprived of any of its property without due process of law because under the Commission's system of accounting it was permitted to carry into its property account only the excess of the full cost of improvements made off the line after deducting the estimated replacement cost of the abandoned portions of the track or because it was required to charge to operating expenses the estimated cost of replacing the abandoned sections. *Ib.*

4. *Accounts; suit between carrier and Commission in regard to; rights determinable.*
Where, as in this case, all classes of stockholders of a carrier, whose dividends are affected by the method of charging betterments and repairs, are not before the court, their rights cannot be determined in a suit between the carrier and the Commission in regard to such methods of accounts. *Ib.*

5. *Accounts of carriers; effect of requiring stockholders to forego dividends for purpose of bettering conditions of property.*
Semble, that requiring stockholders to forego dividends for a period so that the amount not divided be spent in bettering the condition of the property, thus giving them greater security for dividends in the future, does not amount to an unlawful taking of property within the meaning of the Fifth Amendment. *Ib.*

6. *Accounts of carriers; effect of order of Commission on carrier's right to use funds.*
The power given to the Commission by § 20 of the Act to Regulate Commerce, as amended by the Hepburn Act, to require the carrier to keep accounts as prescribed by the Commission, does not impose obligations upon the carrier as to the use of the proceeds of bonds but simply prevents such proceeds from being used in any manner without the fact appearing in the accounts. *Ib.*

7. *Accounts; abandonments; charging of.*

Although the contention of the carrier that abandonments ought to be charged to profit and loss rather than to operating expenses may have weight, this court will not reverse the order of the Commission requiring them to be otherwise charged on the ground that it was an abuse of power. *Ib.*

8. *Character of business as; effect of magnitude.*

The fact that there are great numbers of transactions therein does not give to a business any other character than magnitude; it cannot transform a business from one which is subject to state regulation to one beyond that regulation as interstate. *New York Life Ins. Co.* v. *Deer Lodge Co.*, 495.

9. *Character of insurance business as; effect of use of mails in.*

The fact that the mails are used in consummating contracts for insurance between a corporation in one State and the insured in another, does not give character to the negotiations or the contract nor does it make the latter interstate commerce. *Ib.*

10. *Character of insurance business as; effect of negotiability of policy.*

The fact that after the insured receives his policy of insurance it becomes subject to sale and transfer, does not make the business of issuing it commerce. *Ib.*

11. *Common carriers; status as; application of commodity clause; quære as to.*

Quære, and not now discussed or decided, whether a shipper furnishing lighterage service within lighterage limits for a part of the rate becomes a common carrier and debarred from transporting his own goods under the commodity clause of the Act to Regulate Commerce. *United States* v. *Baltimore & Ohio R. R. Co.*, 274.

12. *Constitutional validity of § 20 of Act to Regulate.*

The constitutional validity of the provisions in § 20 of the Act to Regulate Commerce of February 4, 1887, c. 104, 24 Stat. 379, as amended by the Hepburn Act of June 29, 1906, c. 3591, 34 Stat. 584, giving the Interstate Commerce Commission authority to prescribe the methods by which interstate carriers shall keep accounts, has already been sustained by this court. (*Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194.) *Kansas City Southern Ry. Co.* v. *United States*, 423.

13. *Disadvantage of shipper by reason of location.*
A shipper may be under disadvantages in regard to his shipments by a common carrier by reason of his disadvantageous location. *United States* v. *Baltimore & Ohio R. R. Co.*, 274.

14. *Discrimination between shippers; lease of terminal as.*
The fact that the carrier leases a terminal from a shipper near that shipper's establishments does not, in the absence of any fraudulent intent, import a discrimination in favor of that shipper where the station is actually used for the benefit alike of all shippers in that neighborhood. *Ib.*

15. *Discrimination between shippers; compensation of shipper for services as.*
A carrier may compensate a shipper for services rendered and instrumentalities furnished in connection with its own shipments; and if the amount is reasonable it is not a prohibited rebate or discrimination, even if the carrier does not allow other shippers to render and furnish similar services and instrumentalities and compensate them therefor. *Ib.*

16. *Federal assertion of power; scope of.*
It cannot as yet be asserted that Congress has, to the exclusion of the States, taken over the whole subject of carriers' terminals, switchings and sidings; and *quære* where the accommodation between intrastate and interstate commerce shall be made. *Grand Trunk Ry.* v. *Michigan R. R. Comm.*, 457.

17. *Power of Congress; effect of interference with private business of carrier.*
In dealing with interstate carriers, the fact that some of them are also engaged in private business does not compel Congress to legislate concerning them as carriers in such manner as not to interfere with such private business. *Delaware, L. & W. R. R. Co.* v. *United States*, 363.

18. *Hepburn Act; commodity clause; application of.*
The commodity clause of the Hepburn Act applies not only to the carrier's goods from point of production to the market but also to goods from market to that point. *Ib.*

19. *Hepburn Act; commodity clause; constitutional validity under Fifth Amendment.*
While the power to regulate interstate commerce is subject to the provisions of the Fifth Amendment, an enactment, such as the com-

modity clause, which does not take property or arbitrarily deprive the carrier of a property right, does not violate that Amendment. *Ib.*

20. *Hepburn Act; commodity clause; application and operation.*
The commodity clause is general and applies to all shipments, even if innocent in themselves, which come within its scope; its operation is not confined to particular instances in which the carriers might use its power to the prejudice of shippers. Supplies, purchased for use in operating a carrier's mines, 75% of the product of which is intended for sale and only 25% intended for the carrier's own use, are not necessary for the conduct of its business as a carrier and fall within the prohibition of the commodity clause of the Hepburn Act. *Ib.*

21. *Regulations of Commission; carrier not relieved from compliance by agreements previously entered into.*
A carrier is not relieved from complying with regulations properly made by the Interstate Commerce Commission because of agreements previously entered into; whatever had been done was subject to being displaced by the Commission under the powers conferred upon it by Congress. *Kansas City Southern Ry. Co.* v. *United States*, 423.

22. *State interference with; effect of establishing intrastate railroad rates.*
Minnesota Rate Cases, 230 U. S. 352, followed to the effect that the establishment of railroad rates wholly intrastate by a State Railroad Commission is not an unwarrantable interference with, or a regulation of, interstate commerce. *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.

23. *State burden on; taxation as.*
While a State may not burden interstate commerce or tax the carrying on of such commerce, the mere fact that a corporation is engaged in interstate commerce does not exempt its property from state taxation. *Baltic Mining Co.* v. *Massachusetts*, 68.

24. *State burden on; taxation as.*
While interstate commerce itself cannot be taxed, the receipts of property or capital employed therein may be taken as a measure of a lawful state tax. *Ib.*

25. *State burden on; taxation; judicial interference.*
Courts will not interfere with the exercise of the taxing power of a State on the ground that it violates the commerce clause of the

Federal Constitution unless it appears that the burden is direct and substantial. *United States Fidelity & Guaranty Co.* v. *Kentucky*, 394.

26. *State burden on; license taxes; validity of § 4224, Kentucky Statutes, 1909.*

The license tax imposed by § 4224, Kentucky Statutes, 1909, on persons or corporations having representatives in the State engaged in the business of inquiring into and reporting upon the credit and standing of persons engaged in business in the State, is not unconstitutional as a burden on interstate commerce as applied to a non-resident engaged in publishing and distributing a selected list of guaranteed attorneys throughout the United States and having a representative in that State. *Ib.*

27. *State burden on; license taxes; incidental effect.*

In this case *held*, that the service rendered in furnishing a list of guaranteed attorneys did not, except incidentally and fortuitously, affect interstate commerce and that it was within the power of the State to subject the business to a license tax. *Ficklen* v. *Shelby County*, 145 U. S. 1, followed. *International Textbook Co.* v. *Pigg*, 217 U. S. 91, distinguished. *Ib.*

28. *State burden on; regulations in regard to insurance policies as.*

After reviewing *Paul* v. *Virginia*, 8 Wall. 168, decided by this court in 1868, and other cases in which that case was followed, this court adheres to the decisions in those cases to the effect that the issuing of an insurance policy is not commerce but a personal contract, and that the regulations of a State in regard to policies delivered in the State by non-resident insurance corporations and taxes imposed on said corporations, are not, if otherwise legal, unconstitutional as a burden upon interstate commerce. *The Lottery Cases*, 188 U. S. 321, and *International Textbook Co.* v. *Pigg*, 217 U. S. 91, distinguished. *New York Life Ins. Co.* v. *Deer Lodge Co.*, 495.

29. *Commission; constitutionality of power to establish methods of accounts.*

Interstate Commerce Commission v. *Goodrich Transit Co.*, 224 U. S. 194, followed to the effect that there is no unconstitutional delegation of legislative power by Congress to the Commission in giving it authority to establish methods of accounts by the provisions of the Hepburn Act amending § 20 of the Act to Regulate Commerce in that respect. *Kansas City Southern Ry. Co.* v. *United States*, 423.

30. *Commission; judicial review of orders of.*
Where it appears that the Commission has acted fairly within the grant of power constitutionally conferred upon it by Congress its orders are not open to judicial review. *Ib.*
See CONSTITUTIONAL LAW, 1–4;
HOURS OF SERVICE LAW;
SAFETY APPLIANCE ACT.

INTERSTATE COMMERCE COMMISSION.
See INTERSTATE COMMERCE, 2, 6, 12, 29, 30;
JURISDICTION, F;
SAFETY APPLIANCE ACT, 3.

INTERVENTION.
See MANDAMUS, 2;
PARTIES, 3.

INTOXICATING LIQUORS.
See CONGRESS, POWERS OF, 2;
INDIANS, 7, 9.

JUDGES.
See COURTS;
PHILIPPINE ISLANDS.

JUDGMENTS AND DECREES.
Construction of decree; determination of nature and extent.
A decree is to be construed with reference to the issues it was meant to decide; its nature and extent is not to be determined by isolated portions thereof, but upon the issue made and what it was intended to accomplish. *Vicksburg* v. *Henson*, 259.
See JURISDICTION, A 9; B; G 3;
RES JUDICATA.

JUDICIAL CODE.
1. *Scope of.*
The Judicial Code does not purport to embody all the law upon the subjects to which it relates. Sections 292, 294 and 297 expressly bear upon the extent to which the Code affects or repeals prior laws and to which such prior laws remain in force. *Street & Smith* v. *Atlas Mfg. Co.*, 348.

2. *Relation to Circuit Court of Appeals Act.*
While the Judicial Code supersedes the Circuit Court of Appeals Act, references in other statutes to the latter act now relate to the corre-

sponding sections of the Judicial Code, as is expressly provided by § 292 of the Code. *Ib.*

3. *Repeals by; effect of § 297 on § 18 of Trade-Mark Act of 1905.*
Section 297 of the Judicial Code did not repeal § 18 of the Trade-Mark Act of February 20, 1905. *Ib.*

§ 128 (see Jurisdiction, A 2): *Street & Smith* v. *Atlas Mfg. Co.*, 348.
§ 237 (see Appeal and Error, 4): *Bolens* v. *Wisconsin*, 616 (see Jurisdiction, A 11-14): *Marshall* v. *Dye*, 250; *John* v. *Paullin*, 583; *Bolens* v. *Wisconsin*, 616; *Straus* v. *American Publishers' Assn.*, 222.
§ 239 (see Practice and Procedure, 1): *Stratton's Independence* v. *Howbert*, 399.
c. 299 (see Jurisdiction, C 2): *Springstead* v. *Crawfordsville Bank*, 541.

JURISDICTION.

A. Of This Court.

1. *Of appeal from Circuit Court of Appeals.*
Although the original bill depended solely upon diverse citizenship, independent grounds of deprivation of Federal rights which existed prior to the filing of the bill may be brought into the case by supplemental bill, and if so, the jurisdiction of the District Court does not rest solely on diverse citizenship and the judgment of the Circuit Court of Appeals is not final but an appeal may be taken to this court. (*Macfadden* v. *United States*, 213 U. S. 288.) *Vicksburg* v. *Henson*, 259.

2. *To review judgments and decrees of Circuit Court of Appeals under Trade-Mark Act of 1905; certiorari only mode.*
Judgments and decrees of the Circuit Courts of Appeals arising under the Trade-Mark Act of February 20, 1905, are reviewable by this court only on certiorari and not on appeal or writ of error; appeals in such cases are not allowed under § 128 of the Judicial Code. *Street & Smith* v. *Atlas Mfg. Co.*, 348.

3. *To review judgments and decrees of Circuit Court of Appeals under Trade-Mark Act of 1905 and Judicial Code.*
The intent of Congress, as indicated in the provisions of the Judicial Code relating to the jurisdiction of this court, was to extend rather than contract the finality of decisions of the Circuit Court of Appeals. By the act of February 20, 1905, Congress placed trade-mark cases arising under that statute upon the same footing as cases arising under the patent laws as respects the remedy by certiorari under the Circuit Court of Appeals Act. *Ib.*

4. *Under Criminal Appeals Act; scope of review.*
Under the Criminal Appeals Act of March 2, 1907, this court has no power to revise the mere interpretation of an indictment by the court below, but is confined to ascertaining whether that court erroneously construed the statute on which the indictment rested. *United States* v. *Carter*, 492.

5. *Under Criminal Appeals Act; involution of construction of statute.*
In this case the writ of error is dismissed as the ruling of the court below that the counts which were quashed were bad in law did not reasonably involve a construction of the statute but may well have rested on the opinion of the court as to insufficiency of the indictment. *Ib.*

6. *Under Criminal Appeals Act; construction of statute not involved.*
Where it does not appear that the judgment sustaining a demurrer to the indictment turned upon any controverted construction of the statute, this court has not jurisdiction to review under the Criminal Appeals Act of March 2, 1907. *United States* v. *Moist*, 701.

7. *Under Criminal Appeals Act; dismissal on non-appearance of ground for sustaining demurrer.*
In this case as it does not appear upon what ground the court below acted in sustaining the demurrer the writ of error is dismissed. *Ib.*

8. *To review judgment of Court of Appeals of District of Columbia; when authority exercised under United States drawn in question.*
Where the validity of regulations made by officers to whom power to make them is delegated by the Food and Drugs Act of 1906 is denied, an authority exercised under the United States is drawn in question, and not merely the construction of the statute, and this court has jurisdiction to review the judgment of the Court of Appeals of the District of Columbia. *Steinmetz* v. *Allen*, 192 U. S. 543, followed, and *United States ex rel. Taylor* v. *Taft*, 203 U. S. 461, distinguished. *United States* v. *Antikamnia Co.*, 654.

9. *To review judgment of state court; involution of Federal question.*
Whether due effect was given by the state court to a judgment rendered in the Circuit Court of the United States presents a Federal question which gives this court jurisdiction to review the judgment of the state court, and to determine the question this court will examine the judgment in the Federal court, the pleadings and the issues and, if necessary, the opinion rendered. *Radford* v. *Meyers*, 725.

10. *To review question of jurisdiction of state court turning on local question.*

In this case, as nothing was decided but a preliminary question of the jurisdiction of a state appellate court which turned entirely upon a question of local law, the writ of error is dismissed. *John* v. *Paullin*, 583.

11. *Under § 237, Judicial Code.*

The right of this court to review judgments of the state courts is circumscribed within the limits of § 709, Rev. Stat., now § 237, Judicial Code. (*Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 86.) *Marshall* v. *Dye*, 250.

12. *Under § 237, Judicial Code; involution of Federal question.*

No Federal right is denied by an appellate court of a State in dismissing an appeal from a lower court, because its jurisdiction was not invoked in accordance with the laws of the State, and this court cannot review such a judgment under § 709, Rev. Stat., now Judicial Code, § 237. *John* v. *Paullin*, 583.

13. *Under § 237, Judicial Code, to decide question in case where jurisdiction does not exist.*

The fact that this court has authority under § 237, Judicial Code, to decide a legal question in a case where jurisdiction exists, does not give it power to decide that question in a case where jurisdiction does not exist. *Bolens* v. *Wisconsin*, 616.

14. *Under § 237, Judicial Code; denial of Federal right.*

One who sets up a Federal statute as giving immunity from a judgment against him, may bring the case here under § 709, Rev. Stat., now § 237 of the Judicial Code, if his claim is denied by the decision of the state court. *Straus* v. *American Publishers' Assn.*, 222.

15. *Where judgment rests on state law sufficiently broad to sustain it.*

When a cause of action accrues is a question of state law; and where the judgment below determining who was in possession of the land at a given time rests wholly on state law and is sufficiently broad to support the judgment without involving any Federal right asserted by plaintiff in error this court has no jurisdiction. *Yazoo & M. V. R. R. Co.* v. *Brewer*, 245.

16. *Justiciable controversy for purposes of review; effect to present, of claim that judgment of state court denies State republican form of government.*

The claim that a judgment of the state court enjoining state officers from acting under a state statute declared to be unconstitutional

denies to the State a republican form of government on account of the interference of the judicial department with the legislative and executive departments, does not present a justiciable controversy concerning which the decision is reviewable by this court. (*Equitable Life Assurance Society* v. *Brown*, 187 U. S. 308.) *Marshall* v. *Dye*, 250.

17. *Constitutional questions; what constitute.*

It takes more than a misconstruction by the state court to make a case under the Fourteenth Amendment. *Seattle & Renton Ry.* v. *Linhoff*, 568.

See ACTIONS, 6;
APPEAL AND ERROR.

B. OF CIRCUIT COURTS OF APPEALS.

Finality of decree of District Court from which appeal is cognizable.

A decree of the District Court to the effect that a contemplated issue of bonds, the issuance of which the bill sought to enjoin as wholly illegal, was illegal at that time, leaving open the question of whether it might be legal at a subsequent time, *held*, under the circumstances of this case, to be a final decree from which an appeal could be taken to the Circuit Court of Appeals. *Vicksburg* v. *Henson*, 259.

See SUPRA, A 1;
APPEAL AND ERROR, 6.

C. OF CIRCUIT COURTS.

1. *Amount in controversy; stipulated attorney's fee as part of.*

In determining the amount in controversy for jurisdictional purposes the attorney's fee provided for in a promissory note in case of suit can be considered, as it is not a part of the costs. *Springstead* v. *Crawfordsville Bank*, 541.

2. *Amount in controversy; amendment of pleadings under § 299, Judicial Code.*

Under § 299 of the Judicial Code, amendments to the pleadings are allowable if the jurisdictional amount existed when the suit was brought notwithstanding that since then the amount necessary to give jurisdiction has been increased. *Ib.*

3. *Citizenship of parties; effect of failure to allege.*

Failure to allege the citizenship of the original payee of a note on which suit is brought by the assignee is a jurisdictional defect; but if

diversity of citizenship between the plaintiff and defendant is alleged the defect is amendable. *Ib.*

4. *Under act of June 18, 1910, 36 Stat. 539; application to petition for preliminary injunction.*

The same rule by which the Federal court has jurisdiction to determine all the questions, local as well as Federal, when a Federal question is raised by the bill, governs the application for preliminary injunction under the act of June 18, 1910, c. 309, 36 Stat. 539, 557. *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.

D. Of District Courts.

See Supra, A 1.

E. Of Court of Claims.

1. *Claims cognizable by; exclusion of those growing out of treaty stipulations.*

While the act of March 3, 1887, c. 359, 24 Stat. 505, broadened the general jurisdiction of the Court of Claims, it was not repugnant to, or inconsistent with, the limitations of § 1066, Rev. Stat., expressly excluding from such jurisdiction all claims growing out of treaty stipulations, and it did not, therefore, repeal that section. *Eastern Extension, A. & C. Telegraph Co.* v. *United States*, 326.

2. *Claims within meaning of § 1066, Rev. Stat.*

Claims based on treaty stipulations within § 1066, Rev. Stat., include those which arise solely as the result of cession of territory to the United States. *Ib.*

3. *Claims cognizable by; claims arising out of contract with former sovereign.*

Although the Court of Claims has not jurisdiction of claims against the United States based on treaty stipulations, it has jurisdiction of claims based on contracts originally made with the former sovereign of ceded territory and assumed by the United States after the cession either expressly or by implication. *Ib.*

F. Of Commerce Court.

Limitations on power to enjoin or set aside orders of Interstate Commerce Commission.

The authority conferred upon the Commerce Court by the act of June 18, 1910, c. 309, 36 Stat. 539 (Judicial Code, § 207), with respect to enjoining or setting aside the order of the Interstate Com-

merce Commission, like the authority previously exercised by the Federal Circuit Courts, was confined to determining whether there had been violations of the Constitution, or of the power conferred by statute, or an exercise of power so arbitrary as virtually to transcend the authority conferred. *Kansas City Southern Ry. Co.* v. *United States*, 423.

G. OF STATE COURTS.

1. *Appeal and error; mode of review; power of Congress.*

The method of subjecting the judgments of a subordinate state court to review by appellate courts of the State is a matter of local concern and not within the control of Congress. (*Coyle* v. *Smith*, 221 U. S. 559.) *John* v. *Paullin*, 583.

2. *Power to prescribe; application of rules when Federal rights involved.*

It rests with each State to prescribe the jurisdiction of its appellate courts, and the mode of invoking it, and their rules are equally applicable when Federal, as when only local, rights are involved. *Ib.*

3. *Oklahoma courts' power to review judgment of courts of Indian Territory.*

Section 12 of the act of March 3, 1905, 33 Stat. 1048, 1081, giving the state courts of Oklahoma power to review judgments of the courts temporarily established in the Indian Territory, related only to such judgments and had no application to judgments rendered by the state courts after Statehood. *Ib.*

4. *Of suit under Sherman Act; quære.*

Quære, and not now discussed or decided, whether an original action can be maintained in the state courts for injunction and damages under the Sherman Act. *Straus* v. *American Publishers' Assn.*, 222.

See COURTS, 7.

H. OF TERRITORIAL COURTS.

See COURTS, 8.

I. GENERALLY.

See PRACTICE AND PROCEDURE, 16, 20.

JURY AND JURORS.

See TRIAL.

JURY TRIAL.
See NATURALIZATION, 9.

LABELS.
See PURE FOOD AND DRUGS ACT, 3, 4, 5.

LACHES.
See BONDS, 4;
TIME.

LAND GRANTS.
See PUBLIC LANDS, 6.

LANDLORD AND TENANT.
See CONSTITUTIONAL LAW, 17;
TAXES AND TAXATION, 5, 6.

LAW GOVERNING.
See INSURANCE, 3;
PUBLIC LANDS, 4.

LEASES.
See TAXES AND TAXATION, 5, 6.

LEGISLATIVE POWER.
See CONGRESS, POWERS OF;
RATE REGULATION, 11, 12.

LEVEE DISTRICTS.
See PUBLIC LANDS, 10.

LIBEL AND SLANDER.
Extrinsic facts to establish; function of jury as to.
Where the words are not libelous *per se* and can only be construed as such in the light of extrinsic facts, it is for the jury not only to determine whether the extrinsic facts exist but also whether the words have the defamatory meaning attributed to them. *Baker* v. *Warner*, 588.
See PLEADING, 5, 6.

LIBERTY OF CONTRACT.
See CONSTITUTIONAL LAW, 8.

LICENSE TAXES.
See INTERSTATE COMMERCE, 26, 27.

LIENS.
See BANKRUPTCY, 5, 6, 7, 11;
MECHANICS' LIENS.

LIFE INSURANCE.
See INSURANCE.

LIMITATION OF ACTIONS.
See BANKRUPTCY, 16, 17, 18;
CLAIMS AGAINST THE UNITED STATES, 1.

LIQUORS.
See INDIANS, 7, 9.

LOANS.
See BANKS AND BANKING, 2;
INDIANS, 6.

LOCAL LAW.
Alaska. Code; scope of. The Alaskan Code of Criminal Procedure is very complete and circumstantial. It covers every step in a criminal proceeding including the form of indictment of all crimes whether specifically defined therein or not. *Summers* v. *United States*, 92.
Code, § 43; application of; indictments. Prior to the amendment of 1913, § 43 of Title II of the Alaskan Code of Criminal Procedure providing that the indictment must charge but one crime and in one form only, applied to the indictment for any offense whether specifically defined in that Code or not. *Ib.*
It is a substantial right, and not a mere matter of procedure, to have the indictment confined to one offense and in one form only; and the amendment of 1913 to such § 43, permitting the joinder of several offenses, did not have retrospective operation. *Ib.*

Arizona. Actions for death by negligence. This court is disposed to accept the construction of local statutes by the territorial court, and, therefore, *held* that the action for death by negligence under Rev. Stats. Arizona 1901, pars. 2764–2766, was for the benefit of the estate and that it was not necessary to allege or prove the

existence of beneficiaries or amount of damages sustained by them. *Phœnix Ry. Co.* v. *Landis*, 578.

California. Compensation of county clerks (see Naturalization, 10). *Mulcrevy* v. *San Francisco*, 669.

Georgia. Homesteads; exemption from liens (see Bankruptcy, 7). *Kener* v. *La Grange Mills*, 215.
Insurance (see Insurance, 3, 7, 8). *Aetna Life Ins. Co.* v. *Moore*, 543.

Illinois. Child Labor Law of 1903 (see Constitutional Law, 8). *Sturges & Burn Mfg. Co.* v. *Beauchamp*, 320.

Kansas. Municipalities; power to contract. In this case, this court reaches independently the same conclusion as the state court in determining that under the authority conferred by the statutes of Kansas the municipality cannot divest itself by contract of its duty to see that only reasonable rates are enforced under a public utility franchise. *Wyandotte Gas Co.* v. *Kansas*, 622.

Kentucky. Railroad regulation; act of March 10, 1900 (see Constitutional Law, 6; Rate Regulation, 6). *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.
License tax on commercial agencies; Ky. Stat., § 4224 (see Interstate Commerce, 26). *United States Fidelity & Guaranty Co.* v. *Kentucky*, 394.

Massachusetts. Taxation of foreign corporations; Pt. III, c. 490, Stat. 1909 (see Constitutional Law, 3). *Baltic Mining Co.* v. *Massachusetts*, 68.

Montana. Tax on insurance corporations (see Constitutional Law, 1). *New York Life Ins. Co.* v. *Deer Lodge County*, 495.

New Mexico. Tax sales; Laws of 1899, c. 22, § 25 (see Constitutional Law, 11). *Straus* v. *Foxworth*, 162.

New York. Tax law; Laws of 1909, c. 62 (see National Banks, 1). *Amoskeag Savings Bank* v. *Purdy*, 373.

Philippine Islands. Liability of judges to civil action (see Courts, 2). *Alzua* v. *Johnson*, 106.

Porto Rico. Proof to dispel ambiguities in written instruments. Under the local law of Porto Rico, if there is intrinsic ambiguity in a written instrument the right obtains to dispel such ambiguity by extraneous proof showing the circumstances under which the instrument was executed. *Van Syckel* v. *Arsuaga*, 601.

Vermont. Taxation; Pub. Stat., c. 37, § 815 (see National Banks, 10). *Clement National Bank* v. *Vermont*, 120.

Washington. Homestead entries as community property (see Public Lands, 2). *Buchser* v. *Buchser*, 157.

Generally. *See* PRACTICE AND PROCEDURE, 5.

MANDAMUS.

1. *Availability to control action by lower court.*

Mandamus to compel the District Court to vacate supplemental orders of reference made in a case reversed and remanded, refused, on the ground that the case was decided without prejudice and the District Court acted within its discretion in the conduct of the case and the interpretation of the mandate. *In re Louisville*, 639.

2. *Availability to control action of lower court.*

In this case, the court below having acted within its discretion in refusing a petition for leave to intervene, mandamus to compel it to grant the petition is refused. *In re Engelhard*, 646.

3. *To compel Secretary of Navy to surrender government property to bidder therefor; denial of.*

Mandamus will not lie at the instance of one who in response to advertisement has made the highest bid for a vessel to compel the Secretary of the Navy to deliver the vessel. *Goldberg* v. *Daniels*, 218.

4. *Same.*

The discretion of the Secretary of the Navy is not ended by receipt and opening of bids for a condemned naval vessel even though they satisfy the conditions prescribed. Mandamus will not lie to compel him to accept the highest bid. *Ib.*

MANDATE.

See RATE REGULATION, 5.

MASTER AND SERVANT.

See HOURS OF SERVICE LAW;
SAFETY APPLIANCE ACT.

MEASURE OF DAMAGES.

See BONDS, 6;
NEGLIGENCE, 3.

MECHANICS' LIENS.

1. *Right to, on waiver of completion of contract.*

Even though contractors may not be entitled to a mechanics' lien under the statute unless the contract be completed, they may be entitled thereto if absolute completion is waived, and in this case this court will not go behind the finding of the master followed by the court below that there was a waiver and the contractor was justified in stopping work. *Hobbs* v. *Head & Dowst Co.*, 692.

2. *Right to, where work suspended on insolvency of owner of building.*

In this case this court is satisfied that substantial justice has been done in enforcing a lien for over $45,000 admittedly due to the contractor but contested because about $1,000 of work remained uncompleted on a contract of $187,000, the contractors having ceased work after the owner of the building had failed in its payments and was hopelessly insolvent. *Ib.*

See PRACTICE AND PROCEDURE, 3.

MILITARY USES.

See EMINENT DOMAIN.

MINES AND MINING.

See CORPORATION TAX LAW;
TAXES AND TAXATION, 2, 3.

MONEYED CAPITAL.

See NATIONAL BANKS, 4.

MONOPOLY.

See COPYRIGHTS;
RESTRAINT OF TRADE, 1.

MORTGAGES AND DEEDS OF TRUST.

1. *Foreclosure: setting aside; right of one parting with title before foreclosure.*

One who has transferred his mortgaged premises by deed recorded prior to the foreclosure suit cannot set the foreclosure aside on the

ground that the court excluded testimony offered to show that the transfer was fictitious and that he was still the owner and entitled to notice. *Torres* v. *Lothrop, Luce & Co.*, 171.

2. *Proceeds of crops; application of.*

Although proceeds of a crop received by a mortgagee of the land may by law be imputed to payment of interest on the mortgage and not to other advances, they may, under a special contract with the mortgagor and by his subsequent acquiescence, be applied to payment of advances instead of interest. *Ib.*

MULTIPLICITY OF SUITS.

See ACTIONS, 1.

MUNICIPAL CORPORATIONS.

Public utilities; franchises for; limitation on grants of.

A proviso in a public utility statute, in which manufactured gas, light and water were enumerated, stating that municipalities were not prohibited from granting franchises for supplying natural gas on terms and conditions agreed to by it and the franchisee, construed as bringing natural gas within the statute, and that the terms and conditions on which the franchise could be granted were subject to the same limitations contained in the statute as applicable to franchises for other utilities. *Wyandotte Gas Co.* v. *Kansas*, 622.

See LOCAL LAW (Kansas);
PARTIES, 1, 2, 3;
RES JUDICATA, 5.

NATIONAL BANKS.

1. *Discrimination against by State; effect of tax law of New York of 1909, c. 62.*

The provisions in the tax law of New York, chap. 62, Laws of 1909, imposing a flat rate on shares of all banks, both state and national, without the right of exemption in case of indebtedness of the owners, does not discriminate against national banks and is not invalid under § 5219, Rev. Stat. *People* v. *Weaver*, 100 U. S. 539, distinguished. *Amoskeag Savings Bank* v. *Purdy*, 373.

2. *Discrimination against by State; taxation of, may differ from that of other property.*

The State is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unfriendly discrimination is in-

flicted upon them. *Bridgeport Savings Bank* v. *Feitner*, 191 N. Y. 88, approved. *Ib.*

3. *Discrimination against by State; taxation; sufficiency of showing.*
The Federal courts will not overthrow a system of state taxation as discriminatory against national banks under § 5219, Rev. Stat., unless such discrimination is affirmatively shown. *Ib.*

4. *Moneyed capital within meaning of § 5219, Rev. Stat.*
Mercantile Bank v. *New York*, 121 U. S. 138, followed as to what constitutes moneyed capital within the meaning of § 5219, Rev. Stat. *Ib.*

5. *Powers; restrictions; payment of state taxes for depositors not ultra vires.*
While a national bank can only transact such business as the Federal statutes permit, it may, under its incidental powers, make reasonable business agreements in regard to its deposits including the payment of state taxes thereon pursuant to the laws of the State in which it is located. Such an agreement is not *ultra vires*. *Clement National Bank* v. *Vermont*, 120.

6. *State taxation on deposits; validity of.*
A tax upon deposits in a national bank to be paid by the depositors *held* in this case not to be a tax upon the franchise of the bank. *Ib.*

7. *State taxation on deposits; effect of National Bank Act.*
The National Bank Act does not withdraw credits of depositors in national banks from the taxing power of the State. *Ib.*

8. *State taxation on deposits; power of classification.*
Under its broad powers of classification for taxation, a State may classify depositors in national banks so long as the tax is not essentially inimical to such banks in frustrating the purpose of the legislation or impairing their efficiency as Federal agencies. *Ib.*

9. *State taxation; effect of § 5219, Rev. Stat.*
The object of § 5219, Rev. Stat., is to prevent hostile discrimination against national banks; and a state tax to be in conflict therewith must constitute such a discrimination. *Ib.*

10. *State taxation; discrimination; effect of § 815, c. 37, Vermont Pub. Stat.*
This court finds no basis for the charge of injurious discrimination against national banks in § 815 of Chapter 37 of the Public Statutes of Vermont. *Ib.*

11. *Taxation of, by State; validity under § 5219, Rev. Stat.*
Section 5219, Rev. Stat., deals with shareholders of national banks as a class and not as individuals, and a scheme of taxation that is fair to the class will not be held invalid because of a particular case arising from circumstances personal to the individual affected. *Amoskeag Savings Bank* v. *Purdy*, 373.
See CONSTITUTIONAL LAW, 12, 15.

NATURALIZATION.

1. *Right to, prior to act of June 29, 1906.*
The statutes, as they existed prior to June 29, 1906, conferred the right to naturalization upon such aliens only as contemplated the continuance of a residence already established in the United States. *Luria* v. *United States*, 9.

2. *Status of naturalized citizen.*
Under the Constitution of the United States a naturalized citizen stands on an equal footing with the native citizen in all respects save that of eligibility to the Presidency. *Ib.*

3. *Spirit of the laws; duties of citizenship.*
The spirit of the naturalization laws of the United States has always been that an applicant if admitted to citizenship should be a citizen in fact as well as name and bear the obligations and duties of that status as well as enjoy its rights and privileges. *Ib.*

4. *Cancellation of certificate; residence in foreign country contemplated by § 15 of act of June 29, 1906.*
This court concurs in the conclusion reached by the District Court that the residence in a foreign country of one whose certificate of naturalization was attacked as fraudulent was intended to be and was of a permanent nature and justified the proceeding on the part of the United States to cancel the certificate under § 15 of the act of June 29, 1906. *Ib.*

5. *Cancellation of certificate; evidence to overcome presumption of permanent residence.*
Unverified certificates of unofficial parties as to residence of a naturalized person in a foreign country *held* insufficient to overcome the presumption of permanent residence created under § 15 of the act of June 29, 1906. *Ib.*

6. *Cancellation of certificate; application of par. 2, § 15, act of 1906.*
The provisions of the second paragraph of § 15 of the act of June 29, 1906, dealing with the evidential effect of taking up a permanent

residence in a foreign country within five years after securing a certificate of naturalization applies not only to certificates issued under that law but also to those issued under prior laws. *Ib.*

7. *Cancellation of certificate; constitutional validity of § 15 of act of 1906.*
The provisions of § 15 of the act of June 29, 1906, are not unconstitutional as making any act fraudulent or illegal that was honest and legal when done, or as imposing penalties, or doing more than providing for annulling letters of citizenship to which the possessors were never entitled. (*Johannessen* v. *United States*, 225 U. S. 227.) *Ib.*

8. *Cancellation of certificate; constitutional validity of § 15 of act of 1906.*
The provision in § 15 of the act of June 29, 1906, that the taking up of a permanent residence in a foreign country shortly after naturalization has such a bearing upon the purpose for which naturalization was sought that it is reasonable to make it a presumption, rebuttable by proof to the contrary, that there was an absence of intention to permanently reside in the United States and is not unconstitutional as a denial of due process of law. *Ib.*

9. *Cancellation of certificate; nature of proceeding for; right to trial by jury.*
A proceeding under § 15 of the act of June 29, 1906, to cancel a certificate of naturalization on the ground that it was fraudulently issued is not a suit at common law but a suit in equity similar to a suit to cancel a patent for land or letters patent for an invention and the defendant is not entitled to a trial by jury under the Seventh Amendment. (*United States* v. *Bell Telephone Co.*, 128 U. S. 315.) *Ib.*

10. *Fees in; county clerk's right to, controlled by local law.*
The construction given by the highest court of California to the provisions in the state statute regarding the compensation of county clerks, followed; and *held* that the portion of fees retained under the act of Congress of June 29, 1906, c. 3592, 34 Stat. 596, by a county clerk in naturalization proceedings should be accounted for by him to the county as public moneys. *Mulcrevy* v. *San Francisco*, 669.

11. *Fees in; county clerk's right to, controlled by local law.*
The fact that a state or county official may also under an act of Congress be an agent of the National Government does not affect his relations with the county and relieve him from accounting for fees received from such Government if his contract requires him to

account for all fees received by him even though, so far as the National Government is concerned, he is entitled to retain them in whole or in part for services rendered. *Ib.*

NEGLIGENCE.

1. *Elevators; care in operation.*

Where the possibility of their occurrence is clear to the ordinarily prudent eye, one operating an elevator must guard against accidents even though they may occur in an unexpected manner. (*Washington & Georgetown R. R. Co.* v. *Hickey*, 166 U. S. 521.) *Munsey* v. *Webb*, 150.

2. *Elevators; dangers to be guarded against; effect of finding of jury.*

Where there is a special source of danger in operating an elevator this court will not say, against the finding of a jury, that such danger need not be constantly guarded against. *Ib.*

3. *Measure of damages; sufficiency of instruction as to.*

An instruction that the jury might consider the income and earning capacity of deceased, his business capacity, experience, health conditions, energy and perseverance during his probable expectancy of life, will not be held to be too general in the absence of a suitable request of the defendant for an instruction with greater particularity. *Phœnix Ry. Co.* v. *Landis*, 578.

4. *Proximate cause; effect on appeal of finding by jury.*

Where the jury may properly find that negligence to guard against a possible, although unusual, accident in an elevator was the proximate cause of the injury, the appellate court will not reverse because the negligence was merely a passive omission. *Munsey* v. *Webb*, 150.

See LOCAL LAW (Ariz.).

NEGOTIABLE INSTRUMENTS.

See BILLS AND NOTES.

NEW MEXICO.

See CONGRESS, POWERS OF, 2;
INDIANS, 7.

NOTICE.

See BANKRUPTCY, 9, 11, 13, 14, 15;
CUSTOMS LAW, 3;
INSURANCE, 1.

ONUS PROBANDI.

See EVIDENCE;
INDIANS, 6.

OSAGE INDIAN RESERVATION.

See INDIANS, 6.

PARTIES.

1. *Municipality as proper party defendant in suit to enjoin enforcement of rates.*

In a suit by a public utility corporation to enjoin enforcement of rates claimed to be confiscatory, the municipality is the proper party to be made defendant, and as such it can represent all parties interested. *In re Engelhard*, 646.

2. *Municipality, as representative of a class, on reference to determine rights of individuals in telephone rates wrongfully exacted by company.*

Where a telephone company has sued the municipality to enjoin rates as confiscatory and an injunction has been granted upon the company paying into a fund the excess collected from the subscribers, the municipality is the proper party to represent all the subscribers on a reference to determine the amount of refund to which each is entitled after the rates have been held not confiscatory and the injunction dissolved. *Ib.*

3. *Same; right of subscriber to intervene.*

Under such conditions a single subscriber cannot represent all the subscribers as a class and the court is not compelled under Equity Rule 38 to allow him to intervene. *Ib.*

See ACTIONS, 7; INTERSTATE COMMERCE, 4;
APPEAL AND ERROR, 1–4; RATE REGULATION, 10;
UNITED STATES.

PARTNERSHIP.

1. *Right of one partner as against interests of others.*

On the record in this case, *held*, that a partner who had kept alive a lease on property which his firm had acquired from him through another source of title so as to protect the interest of the firm against attacks from outside parties could not subsequently recover the property under the lease to the detriment of the other partners. *Van Syckel* v. *Arsuaga*, 601.

2. *Right of partner to recover property sold by him to partnership.*

There is evident lack of merit in the contention of a partner to recover

property which he sold to the partnership and was paid for, without returning the price. *Ib.*

PENAL STATUTES.

See STATUTES, A 10.

PENALTIES AND FORFEITURES.

See CRIMINAL LAW, 5;
CUSTOMS LAW, 2;
HOURS OF SERVICE LAW, 1, 5;
NATURALIZATION, 7;
RAILROADS, 5, 7;
RATE REGULATION, 13.

PERJURY.

See BANKRUPTCY, 2;
EVIDENCE, 3.

PHILIPPINE ISLANDS.

Courts; power of Philippine Commission; quære.

Quære whether the Philippine Commission has power to enact legislation making any judge liable to civil action for official acts. *Alzua* v. *Johnson*, 106.

See COURTS, 2, 4, 5.

PLEADING.

1. *Demurrer; admissions by; conclusion of law.*

A statement that a statutory sale was not sufficiently advertised is a pure conclusion of law and, in the absence of allegations of fact to sustain it, is an empty assertion that is not admitted by demurrer. *Straus* v. *Foxworth*, 162.

2. *Interdependent statements in.*

Statements that the amount of taxes for which the property was sold was excessive must be read in connection with other statements in the pleading admitting that the taxes were delinquent and therefore augmented by the statutory penalties. *Ib.*

3. *Motions in arrest of judgment.*

Motions in arrest of judgment are not favored. *Baker* v. *Warner*, 588.

4. *Motions in arrest of judgment; sufficiency of pleading; liberal construction.*

In considering a motion in arrest the plaintiff will be given the benefit of every implication that can be drawn from the pleading liberally construed; and even if the allegations are defectively set forth or

improperly arranged, if they show facts constituting a good cause of action the motion will be denied. *Ib.*

5. *Defects in; cure by verdict.*
Where the defendant in a suit for libel is put on notice of extrinsic facts surrounding the publication, and does not demur but joins issue and goes to trial, a verdict against him cures the defects in the complaint and a motion to arrest should not be granted. *Ib.*

6. *Defects in; cure by verdict.*
The strict rules announced in earlier decisions in this respect have been modified by modern and more liberal rules of pleading. *Ib.*
See BILLS AND NOTES, 1; LOCAL LAW (Ariz.);
JURISDICTION, C 2, 3; PRACTICE AND PROCEDURE, 32.

POLICE POWER.
See STATES, 7.

PORTO RICO.
See LOCAL LAW.

POWERS OF CONGRESS.
See BANKRUPTCY, 7;
CONGRESS, POWERS OF.

PRACTICE AND PROCEDURE.

1. *Certificate; scope of decision on.*
Where the case is here under § 239, Judicial Code, and the whole record has not been sent up, this court, under Rule 37, deals with the facts as certified and not otherwise; under such circumstances it answers only the questions of law certified and does not go into questions of fact or of mixed law and fact. *Stratton's Independence* v. *Howbert*, 399.

2. *Conclusiveness of findings of fact based on admitted principle.*
Where the principle on which the amount recovered is based is admitted, this court will not go behind well warranted findings of fact in regard to the question of amount. *Hermanos* v. *Caldentey*, 690.

3. *Conclusiveness of judgment of state court upholding mechanics' lien.*
Where the state trial court had upheld a mechanics' lien before the petition and the trustee in bankruptcy seeks in the Federal court to prevent the enforcement of the lien, this court will not go behind

the state judgment because exceptions thereto had not been passed upon owing to the action of those representing the estate. *Hobbs* v. *Head & Dowst Co.*, 692.

4. *Construction of documents by state court not reviewable.*
This court does not sit to revise the construction of documents by the state courts, even if alleged to be contracts within the protection of the Federal Constitution. (*Fisher* v. *New Orleans*, 218 U. S. 438.) *Seattle & Renton Ry.* v. *Linhoff*, 568.

5. *Controlling effect of local decisions.*
This court is slow to revise the judgment of the highest court of a Territory on matters of local administration. *Alzua* v. *Johnson*, 106.

6. *Controlling effect of decision of state court.*
A decision of the highest court of a State on a principle of general jurisprudence is not controlling upon this court. (*Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349.) *Aetna Life Ins. Co.* v. *Moore*, 543.

7. *Controlling effect of state court's construction of state statutes.*
While this court, in determining whether there is a contract, is not bound by the construction of the state statutes by the state court, it will not lightly disregard such construction but will seek to uphold it so far as it can consistently with the duty to independently determine the question. *Wyandotte Gas Co.* v. *Kansas*, 622.

8. *Controlling effect of state court's construction of state statute.*
A construction by the Supreme Court of the Territory that is not manifestly wrong will not be rejected by this court, and so *held* as to a construction of the words "in accordance with this act" as meaning "under this act." (*Treat* v. *Grand Canyon Railway Co.*, 222 U. S. 448.) *Straus* v. *Foxworth*, 162.

9. *Controlling effect of local interpretation of state statute; scope of review.*
An interpretation by the state court of a state statute is controlling on this court; and this court determines whether the statute as so delimited conflicts with Federal law. *Clement National Bank* v. *Vermont*, 120.

10. *Controlling effect of territorial court's construction of local statute.*
The settled rule of this court is to accept the construction placed by the territorial court upon a local statute, and not to disregard the same unless constrained so to do by clearest conviction of serious error.

(*Phœnix Railway Co.* v. *Landis*, *ante*, p. 578.) *Work* v. *United Globe Mines*, 595.

11. *Same.*
Where, as in this case, it does not appear that manifest error was committed in the construction and application of the statute of limitation or in determining the sufficiency of a deed to the premises, the title to which was involved, this court will not reverse the judgment of the territorial court. *Ib.*

12. *Controlling effect of local court's decision as to character of estate in realty.*
Unless the statutes of the United States control, this court follows the state court as to whether real estate is separate or community property. *Buchser* v. *Buchser*, 157.

13. *Following findings concurred in below.*
No sufficient reason being shown for departing from it, this court follows its rule of not disturbing findings made by the Master, the court of first instance and the Circuit Court of Appeals. *Greey* v. *Dockendorff*, 513.

14. *Following lower court's construction of meaning of indictment.*
On a direct appeal from an order quashing an indictment this court assumes the correctness of the meaning affixed to the indictment by the court below and determines only whether the statute was correctly construed. *United States* v. *Davis*, 183.

15. *Following lower court in application of local law.*
In the absence of clear conviction of error, this court follows the conclusions of the court below in applying the local law. *Torres* v. *Lothrop, Luce & Co.*, 171.

16. *Following state court's construction of state constitution.*
In this case this court follows the construction given by the highest court of the State to the provisions of the state constitution in regard to its jurisdiction of cases in which the State is a party or which are brought by the consent of the State on the relation of an individual. *Bolens* v. *Wisconsin*, 616.

17. Following state court's declaration of policy of State.
The state court having declared the policy of the State as excluding a constructive obligation to indemnify against the exercise of the sovereign power of taxation from leases given by the State, this court will not overthrow it. *Trimble* v. *Seattle*, 683.

18. *Following determination of executive departments in political matters relating to Indians.*

In reference to all political matters relating to Indians it is the rule of this court to follow the executive and other political departments of the Government whose more special duty it is to determine such affairs. If they recognize certain people as a tribe of Indians, this court must do the same. *United States* v. *Sandoval*, 28.

19. *Reluctance to adjudge state statute in conflict with state constitution before decision by state court.*

Unless the case imperatively demands such a decision, this court is reluctant to adjudge a state statute to be in conflict with the state constitution before that question has been considered by the state tribunals to which the question properly belongs. (*Michigan Central R. R. Co.* v. *Powers*, 201 U. S. 245.) *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.

20. *Review of questions for guidance of state court where jurisdiction wanting.*

Where jurisdiction does not exist this court will not pass upon the questions involved so that in future cases involving those questions the state court may be guided by the views expressed by this court thereon. *Bolens* v. *Wisconsin*, 616.

21. *Scope of review.*

This court, having sustained appellant's contention that the indictment was insufficient, refrains from expressing any opinion on other contentions of appellant. *Summers* v. *United States*, 92.

22. *Scope of review; duty to decide questions.*

Where appellant with ground challenges the adequacy of the findings of the court below to sustain the legal conclusions based on them, it is the duty of this court to consider and decide that question. *Van Syckel* v. *Arsuaga*, 601.

23. *Scope of review; construction of contract; effect of involution of construction of state statutes.*

The fact that the determination of the question of power of the municipality to make the contract alleged to have been impaired involves consideration and construction of the laws of the State does not relieve this court from the duty of determining for itself the scope and character of such contract. *Wyandotte Gas Co.* v. *Kansas*, 622.

24. *Scope of review where correct decision of trial court reversed in intermediate appellate court.*

Where plaintiff in error in this court succeeded in the trial court and was reversed in the intermediate appellate court, this court is not limited to a consideration of the points presented but must enter the judgment which should have been rendered by the court below on the record before it. *Baker* v. *Warner*, 588.

25. *Scope of review on error, of judgment of territorial court.*

This court in reviewing on error the judgment of the territorial court is limited to those questions that may be appropriately raised on writ of error, which excludes an objection that the verdict is against the weight of evidence or that the damages allowed are excessive. *Phœnix Ry. Co.* v. *Landis*, 578.

26. *Scope of review on granting new trial.*

Where two cases are consolidated by the court below because it appears reasonable to do so under § 921, Rev. Stat., and this court doubts the reasonableness of the consolidation, it need not pass upon that subject definitely if, as in this case, a new trial is ordered on other grounds. *Aetna Life Ins. Co.* v. *Moore*, 543.

27. *Scope of review where lower court declined jurisdiction.*

Where the court below declined to take jurisdiction and the appeal is solely on that question, this court will not express any opinion on the merits as they are not before it. *Eastern Extension, A. & C. Telegraph Co.* v. *United States*, 326.

28. *Scope of review on appeal from Commerce Court.*

Where the Interstate Commerce Commission held payments for shippers' services rendered and facilities furnished to be discriminatory only in so far as similar payments for similar services are not paid to other shippers, other questions as to the legality of such payments which were not passed on by the Commission or the Commerce Court are not properly before this court and will not be passed on. *United States* v. *Baltimore & Ohio R. R. Co.*, 274.

29. *Scope of review; application of Federal statute alone considered.*

Where the state court dismissed the bill solely on the ground that defendant's acts were not within the denunciation of the Federal statute on which plaintiff relied, the judgment will be reversed on that ground and it is unnecessary for this court to decide other Federal questions involved. *Straus* v. *American Publishers' Ass'n*, 222.

30. *Scope of review; reversal of appellate court for not deciding matters not within its authority.*

Where the appellate court is without authority to consider errors of the trial court, which were not there assigned, this court cannot reverse the appellate court for error in not deciding matters which it had no authority to pass on. *Torres* v. *Lothrop, Luce & Co.*, 171.

31. *Tardy objections; when too late.*

An objection to the charge in regard to the subject of damages which was not presented to the court below comes too late when raised in this court for the first time. *Phœnix Ry. Co.* v. *Landis*, 578.

32. *Tardy objections; when point raised too late.*

Where a point involving sufficiency of the complaint is not raised and defendant does not challenge the statement of the court that it supposes the point will not be raised, it is too late to raise it in this court. *Luria* v. *United States*, 9.

33. *Interpretation by lower court of stipulation of counsel not reviewable.*

In this case, *held* that the interpretation by the state court of a stipulation of counsel was not open to review in this court as not raising any Federal question although there were Federal questions involved in the case. *Little* v. *Williams*, 335.

34. *Limitation on right of one attacking constitutionality of statute.*

One attacking a statute on the ground that it is unconstitutional is limited to his own case as the statute has been applied therein; he cannot rely on a possible construction of the statute that might make it unconstitutional. (*Castillo* v. *McConnico*, 168 U. S. 674.) *Straus* v. *Foxworth*, 162.

35. *Determination of jurisdiction of state court.*

This court will not hold that the state court had no jurisdiction to determine rights under an ordinance because it had been superseded by a later ordinance when the latter does not appear in the record, and the highest court of the State has held in another case that it does not affect the case at issue. *Seattle & Renton Ry.* v. *Linhoff*, 568.

36. *Affirmance, without prejudice, in suit for accounting.*

Where it appears that there may have been an error in computing the amount of the recovery, this court can affirm the judgment without prejudice to reopening the account for the single purpose of correcting such error if the lower court so permits. *Hermanos* v. *Caldentey*, 690.

37. *Reversal in part and affirmance in part.*
Although this court reverses the order to arrest the judgment, it affirms the ruling of the intermediate appellate court that there should be a new trial on account of erroneous instructions on material matters. *Baker* v. *Warner*, 588.

38. *As to holding error in lower court following practice and construction of local statute.*
This court will not, except in a clear case, hold that the appellate court in a Territory erred in following the established practice and construction of a local statute in regard to the record in cases on appeal. *Phœnix Ry. Co.* v. *Landis*, 578.

39. *Effect of refusal to reverse on attitude of court as to ruling below.*
In refusing to reverse because no manifest error appears, this court does not intimate any doubt as to the correctness of the ruling, but simply abstains from deciding a purely local question in the absence of conditions rendering it necessary to do so. *Work* v. *United Globe Mines*, 595.

See APPEAL AND ERROR, 5;
JURISDICTION, A 9;
LOCAL LAW (Ariz.).

PREFERENCES.

See BANKRUPTCY;
INTERSTATE COMMERCE, 14, 15.

PRESUMPTIONS.

See CONSTITUTIONAL LAW, 14;
NATURALIZATION, 5, 8.

PRINCIPAL AND AGENT.

See INSURANCE, 1;
TAXES AND TAXATION, 7.

PRINCIPAL AND SURETY.

See BONDS, 3, 4, 5.

PROCESS.

See TAXES AND TAXATION, 7.

PROPERTY RIGHTS.

See EMINENT DOMAIN;
UNITED STATES.

PROXIMATE CAUSE.

See NEGLIGENCE, 4.

PUBLIC LANDS.

1. *Homestead entries; alienation; consistency of state with Federal law.*

A state law that after completion of the entryman's title the property becomes community property is not like a contract for sale to a third party; but is consistent, and not in conflict, with the provisions of the act of March 3, 1891, prohibiting alienation of homestead entries. *Buchser* v. *Buchser*, 157.

2. *Homestead entries as community property; effect of local decision.*

The highest court of the State of Washington having held that immediately on completion of title of an entryman the property becomes community property, and that on the death of the wife after such completion her children have an interest therein, this court follows that decision. *Ib.*

3. *Indemnity grants; pending selections; effect to exclude rights of others.*

This case decided on the authority of *Northern Pacific Railway Company* v. *Wass*, 219 U. S. 426. *Northern Pacific Ry. Co.* v. *Houston*, 181.

4. *Law governing.*

Until the title of an entryman is completed the laws of the United States control; but after completion the land becomes immediately subject to state legislation. (*McCune* v. *Essig*, 199 U. S. 382.) *Buchser* v. *Buchser*, 157.

5. *Power of United States over land with which it has parted.*

Even if the United States could impress a peculiar character upon land within a State after parting with it, it would only be by clearly expressing it in a statute, which has not been done. (*Wright* v. *Morgan*, 191 U. S. 55.) *Ib.*

6. *Railroad grants; nature and scope of grant under act of July 1, 1862.*

The right of way granted under the Land Grant Act of July 1, 1862, was a very important aid to the railroad, and was a present absolute grant subject to no conditions except those absolutely implied such as construction and user. *Union Pacific R. R. Co.* v. *Laramie Stock Yards Co.*, 190.

7. *Railroad grants; effect of state statutes of limitation on grants under act of July 1, 1862.*

The act of June 24, 1912, c. 181, 37 Stat. 138, permitting state statutes of limitation to apply to adverse possession of portions of the right

of way granted to the railroad company under the act of July 1, 1862, did not have a retroactive effect. (*Sohn* v. *Waterson*, 17 Wall. 596.) *Union Pacific R. R. Co.* v. *Laramie Stock Yards Co.*, 190; *Union Pacific R. R. Co.* v. *Snow*, 204.

8. *Swamp-Land Act; title granted by.*

The Swamp-Land Act of September 28, 1850, c. 84, 9 Stat. 919, did not in itself operate to invest the States with swamp and overflowed lands. While the act was a grant *in præsenti* and gave an inchoate title, identification and patent were necessary to vest fee simple title in the State. *Little* v. *Williams*, 335.

9. *Swamp lands; measure of right of State in.*

A duly legalized agreement between a State and the United States that the former accepts lands theretofore patented to it under the Swamp-Land Act as its full measure of land due thereunder extinguishes whatever inchoate title it or any of its political subdivisions may have in any swamp lands not already patented to it. *Ib.*

10. *Swamp lands; relinquishment by State; effect on right of its political subdivisions.*

A levee district is a mere political subdivision of the State creating it and is bound by the action of the State; and so *held* that a relinquishment by the State of Arkansas of all lands in which it had merely an inchoate title under the Swamp-Land Act operated also to relinquish the title thereto of the levee districts to which the State had previously conveyed such lands. (*Rogers Locomotive Works* v. *Emigrant Company*, 164 U. S. 559.) *Ib.*

See CRIMINAL LAW, 3, 4;
TAXES AND TAXATION, 4.

PUBLIC OFFICERS.

See ACTIONS, 2–8;
APPEAL AND ERROR, 1, 2;
FEDERAL QUESTION.

PUBLIC POLICY.

See PRACTICE AND PROCEDURE, 17.

PUBLIC UTILITIES.

See ACTIONS, 1;
LOCAL LAW (Kan.);
MUNICIPAL CORPORATIONS;
PARTIES, 1, 2, 3.

PUBLIC WORKS.

See BONDS.

PUEBLO INDIANS.

See CONGRESS, POWERS OF, 2;
INDIANS, 7, 8, 9.

PURE FOOD AND DRUGS ACT.

1. *Purpose of.*

The purpose of the Food and Drugs Act of 1906 is to secure purity of food and drugs and to inform purchasers of what they are buying. Its provisions are directed to that purpose and must be construed to effect it. *United States* v. *Antikamnia Co.*, 654.

2. *Regulations under; nature and extent of power given by § 3.*

The power given by § 3 of the Food and Drugs Act to the specified heads of departments to make regulations is an administrative power and not one to alter, or add to, the act, and the extent of the power must be determined by the purpose of the act and the difficulties its execution might encounter. *Ib.*

3. *Regulations under; validity and effect of No. 28.*

Regulation No. 28 for the enforcement of the Food and Drugs Act requiring labels to state not only what drugs contain but also what the contents are derivatives of, is within the delegated power of the act and does not enlarge or alter its provisions. *Ib.*

4. *Labels; sufficiency under Regulation No. 28.*

It is a violation of the Food and Drugs Act of 1906 and of Regulation No. 28 to label tablets as containing acetphenetidin without stating that acetphenetidin is a derivative of acetanilid. *Ib.*

5. *Labels; requirements of act as to.*

The Food and Drugs Act itself requires that not only primary substances be labelled but also their derivatives, and no regulations are necessary to support this requirement. *Ib.*

See FEDERAL QUESTION;
JURISDICTION, A 8;
STATUTES, A 9.

RAILROAD GRANTS.

See PUBLIC LANDS, 6, 7.

RAILROADS.

1. *Charters; amendment; effect on vested property rights.*

An amendment to an existing charter enacted under the reserved power to alter and amend will not be construed as having a retroactive effect as to vested property rights in absence of clear intent of the legislature enacting it. *Union Pacific R. R. Co.* v. *Laramie Stock Yards Co.*, 190.

2. *Charters; amendment; effect of act of June 24, 1912.*

Congress did not intend by the act of June 24, 1912, to exercise powers to alter and amend the charters of the railroad companies reserved by the acts of July 1, 1862, and July 2, 1864. *Ib.*

3. *Limitation and forfeiture of rights; assumption against.*

This court will not assume that Congress intends to forfeit or limit any of the rights granted to the transcontinental railroads unless it does so explicitly. *Ib.*

4. *Regulation by State; creation of commission; judicial interference.*

A State is competent to create a commission and give it power of regulating railroads and investigating conditions upon which regulation may be directed; and the judiciary will only interfere with such a commission when it appears that it has clearly transcended its powers. *Grand Trunk Ry.* v. *Michigan R. R. Comm.*, 457.

5. *Regulation; penalties; separableness; effect on enforcement of statute.*

If the provisions for penalties in a statute creating a railroad commission and providing for the enforcement of the orders made by it are separable, as in this case, their constitutionality can be determined when their enforcement is attempted, and the operation of the whole act will not be suspended before that event. (*Louis. & Nash. R. R. Co.* v. *Garrett*, *ante*, p. 298.) *Ib.*

6. *Regulation of intra-city transportation; effect of purpose for which railroad incorporated.*

Railroad companies are incorporated for purposes of transportation; and the fact that a company was not specifically incorporated to carry on intra-city transportation cannot prevail against the power of the State to regulate it in regard to legitimate elements of transportation within the city. *Ib.*

7. *Right of way; forfeiture; effect of act of June 24, 1912.*

The act of June 24, 1912, did not amount to a forfeiture of that part of the right of way granted under the act of July 1, 1862, not actually

occupied by the railroads; *quære* whether such a construction of the act of 1912 would not render it illegal. *Union Pacific R. R. Co.* v. *Snow*, 204.

8. *Termini within city.*

The fact that a movement of freight begins and ends within the limits of a city does not take from it its character of an actual transportation between two termini; and so *held* in regard to transportation between junction points in Detroit, Michigan. *Grand Trunk Ry.* v. *Michigan R. R. Comm.*, 457.

9. *Termini within city; power of state commission to regulate traffic between.*

While a city may be in some senses a terminal unit, the State Railroad Commission may regulate traffic between different points therein as transportation, and to do so does not amount to an appropriation of the terminals of one road for the use and benefit of other roads. *Ib.*

10. *Transportation; regulation of; circumstances controlling.*

Transportation is the business of railroads and when, and to what extent, that business may be regulated so depends upon circumstances that no inflexible rule can be laid down. (*Wisconsin &c. R. R. Co.* v. *Jacobson*, 179 U. S. 287.) *Ib.*

See COMMON CARRIERS; HOURS OF SERVICE LAW; CONSTITUTIONAL LAW, 2; INTERSTATE COMMERCE; SAFETY APPLIANCE ACT.

RATE REGULATION.

1. *Appeal to courts; effect of failure of statute to provide for; constitutionality.*

While a State may permit appeals to the courts from the rate-making orders of its railroad commission, *Prentis* v. *Atlantic Coast Line*, 211 U. S. 210, failure to provide for such an appeal does not deny the carrier due process of law as guaranteed by the Fourteenth Amendment. *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.

2. *Carrier's right of resort to courts from order of state commission; effect of statute to deny.*

Failure in a state statute establishing a railroad commission and giving it authority to fix reasonable rates to provide for an appeal from orders of the commission does not deny the carrier right of access to the courts to review an order that fixes rates so unreasonably

low as to be confiscatory and is not an unconstitutional denial of due process of law under the Fourteenth Amendment. *Ib.*

3. *Carrier's right of resort to courts to test constitutionality of order of state commission.*

Presumably the state, as well as the Federal, courts are open to a carrier to test the constitutionality of an order made by a railroad commission and to obtain protection by bill in equity against its enforcement if unconstitutional. (*Home Telephone Co.* v. *Los Angeles,* 211 U. S. 265.) *Ib.*

4. *Confiscation in; sufficiency of showing.*

Loss in revenue generally follows reductions in rates but that does not necessarily prove that the reduced rates are confiscatory; there must be further proof that they do not allow a fair return for service rendered. *Ib.*

5. *Confiscation; proceedings to determine; effect of mandate of this court.*

The mandate in the case of *Louisville* v. *Cumberland Telephone Co.,* 225 U. S. 430, in which this court decided that the rates established by municipal ordinance were not confiscatory and reversed the judgment holding that they were, without prejudice, and remanded the case to the lower court, permitted further proceedings; and the judge of the District Court acted within his discretion in continuing the case and appointing a Master to take proof and report as to the amount collected by the company during the injunction period and also after the new rates had been put into effect. *In re Louisville,* 639; *Louisville* v. *Cumberland Telephone Co.,* 652.

6. *Intrastate rates; power of State; delegation of authority.*

In prescribing intrastate rates the legislature of a State may act directly or, in the absence of constitutional restriction, it may commit the authority to do so to a subordinate body; and *held* that the legislature of Kentucky by the act of March 10, 1900, properly authorized the Railroad Commission of that State under certain conditions to fix reasonable intrastate rates for railroad transportation in conformity with the provisions of the constitution of the State. *Louisville & Nashville R. R. Co.* v. *Garrett,* 298.

7. *Intrastate rates; arbitrary fixing of by state commission.*

In this case it does not appear that the State Railroad Commission acted in an arbitrary manner in fixing intrastate railroad rates; nor

was it necessary to give legality to its order as to particular rates established to require a reduction in other rates. *Ib.*

8. *Judicial relief; mode of.*

The only mode of judicial relief against unreasonable rates is by suit against the governmental authority which established them or is charged with the duty of enforcing them. *In re Engelhard*, 646.

9. *Judicial interference.*

So long as the legislature acts within its proper sphere, courts cannot substitute their judgment with respect to reasonableness of the established rates. *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.

10. *Judicial review of order of railroad commission in suit to enjoin enforcement; limitation as to awards of reparation.*

In an equity suit by a carrier against the members of a State Railroad Commission to restrain enforcement of a rate order under a statute which provided for awards of reparation for failure to comply with the order, the court should not pass upon the validity of any of such awards made to parties not before the court. *Ib.*

11. *Legislative and not judicial function.*

Prescribing rates for the future is a legislative and not a judicial act. *Louisville & Nashville R. R. Co.* v. *Garrett*, 298.

12. *Legislative power as to; delegation of authority; determination of reasonableness of rates.*

The legislature may determine what are reasonable rates either directly or through a subordinate body and use methods like those of judicial tribunals to elicit facts without invading the province of the judiciary. (*Prentis* v. *Atlantic Coast Line*, 211 U. S. 210.) *Ib.*

13. *Penalties; unreasonable; effect to render statute unconstitutional.*

Penalties which are so unreasonable and severe as to be an unconstitutional denial of due process of law will not render a rate statute unconstitutional if they are separable, as in this case. *Ib.*

14. *Reasonableness of rates; considerations in determining.*

The right of the carrier to make its own intrastate rates is subject to the constitutionally enacted law of the State; in the absence of a legislative rate courts apply the common law in passing upon the reasonableness of the rates, but after legislative rates have been established the courts apply those rates unless there are constitutional objections. *Ib.*

15. *Validity of order of state commission; confiscation; sufficiency of basis for holding.*

An order of a state railroad commission prescribing maximum freight rates on specified intrastate traffic will not be declared unconstitutional as confiscatory and depriving a railroad company of its property without due process of law where there is no proof of the value of the company's property within the State or of its receipts from its entire intrastate traffic, or of the value of that portion of the property affected by the order. *Wood* v. *Vandalia R. R. Co.*, 1.

16. *Validity of order of state commission; confiscation; evidence to establish.*

It does not necessarily follow from the mere fact that the total operating expenses of a railroad or of a division thereof bear a given relation to the entire receipts of that road or division, that the same ratio of expenses to receipts are maintained in regard to each particular class of traffic, and this court will not declare an order of a state railroad commission unconstitutional as confiscatory without proof as to the actual facts in regard to the particular rates complained of. *Ib.*

See INTERSTATE COMMERCE, 22;
LOCAL LAW (Kan.);
PARTIES, 1, 2, 3.

REAL PROPERTY.

See TAXES AND TAXATION, 1.

REBATES.

See INTERSTATE COMMERCE, 15.

RECEIVERS.

See CORPORATION TAX LAW, 7.

RECORD ON APPEAL.

See APPEAL AND ERROR, 7.

REPEALS.

See STATUTES, A 15.

REPUBLICAN FORM OF GOVERNMENT.

See CONSTITUTIONAL LAW, 19.

RESERVATIONS.

See INDIANS, 6.

RES JUDICATA.

1. *Application of rule.*

While the enforcement of the rule of *res judicata* is essential to secure the peace and repose of society, it is equally true that to enforce the rule upon unsubstantial grounds would work injustice. *Vicksburg* v. *Henson*, 259.

2. *Estoppel; operation of.*

Where the suit in which the former judgment is set up is not upon the identical cause of action the estoppel operates only as to matters in issue or points controverted and actually decided in the former suit. *Radford* v. *Myers*, 725.

3. *Estoppel; scope of.*

Judgments become estoppels because they affect matters upon which the parties have been heard, but are not conclusive upon matters not in question or immaterial. (*Reynolds* v. *Stockton*, 140 U. S. 254.) *Ib.*

4. *Questions concluded.*

In a suit in which two of the parties successfully unite in asking the court to award the fund to one of them against a third party claiming it under an assignment, the judgment is not, as between the two so uniting, *res judicata* so that the one to whom it is awarded is not obligated to account therefor to the other under an agreement so to do if the record does not show that such question was also at issue and determined. *Ib.*

5. *Decree construed and held not to be res judicata of right of municipality to issue bonds for erection of water works.*

A decree in a former action between a municipal water company and the municipality that the former had an exclusive contract for a specified period and that the latter could not issue bonds for the purpose of establishing a municipal water supply to be forthwith put into operation, rendered while the franchise had a long period to run, *held* in this case not to be *res judicata* as to the right of the municipality to issue bonds within a short time prior to the expiration of the franchise for the purpose of erecting water works which were not to be put into operation until after the expiration of the existing franchise. *Vicksburg* v. *Henson*, 259.

RESTRAINT OF TRADE.

1. *Anti-trust Act; combinations within.*

The Sherman Act is broadly designed to reach all combinations in unlawful restraint of trade and tending because of the agreements or combinations entered into to build up and perpetuate monopolies. The act is a limitation of rights which may be pushed to evil consequences and may, therefore, be restrained. (*Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20.) *Straus* v. *American Publishers' Ass'n*, 222.

2. *Anti-trust Act; combinations within; agreement as to sale of copyrighted books.*

As the agreement involved in this case went beyond any fair and legal means to protect trade and prices, practically prohibited the parties thereto from selling to those it condemned, affected commerce between the States, it was manifestly illegal under the Sherman Act, and was not justified as to copyrighted books under any protection afforded by the copyright act. *Ib.*

See COPYRIGHTS.

RETROSPECTIVE LAWS.

See CONSTITUTIONAL LAW, 11; RAILROADS, 1.
PUBLIC LANDS, 7; STATUTES, A 12, 13, 14.

RIDERS IN LEGISLATION.

See STATUTES, A 16.

SAFETY APPLIANCE ACT.

1. *Employés protected by; quære as to.*

Quære, and not decided on this record, whether the purpose of the Safety Appliance Act is to protect all employés of every class and the mere absence of an automatic coupler is enough for liability if accident and injury result to an employé. *Pennell* v. *Philadelphia & Reading Ry.*, 675.

2. *Automatic couplers not required between locomotive and tender.*

Under the Safety Appliance Act of March 2, 1893, c. 196, 27 Stat. 531, as amended March 2, 1903, c. 976, 32 Stat. 943, automatic couplers are not required between the locomotive and the tender. *Ib.*

3. *Custom of railroad; effect on construction of act.*

While a custom of railroads cannot justify a violation of a mandatory statute, a custom which has the sanction of the Interstate Commerce Commission is persuasive of the meaning of that statute. *Ib.*

SALES.

See MANDAMUS, 3, 4;
RESTRAINT OF TRADE, 2;
VENDOR AND VENDEE.

SECRETARY OF THE INTERIOR.

See INDIANS, 1, 2.

SECRETARY OF THE NAVY.

See MANDAMUS, 3, 4.

SERVITUDES.

See EMINENT DOMAIN, 1, 4.

SET-OFF.

See BANKRUPTCY, 8.

SEVENTH AMENDMENT.

See NATURALIZATION, 9.

SHERMAN ACT.

See COPYRIGHTS;
JURISDICTION, G 4;
RESTRAINT OF TRADE.

SISSETON AND WAHPETON INDIANS.

See INDIANS, 1.

STARE DECISIS.

Application of rule.

The sanction of the rule of *stare decisis* urges this court against reversing a long series of decisions where state legislation has been enacted in reliance thereon, and the reversal would involve the promulgation of a new rule of constitutional inhibition on state legislation necessitating readjustment of policy and laws. *New York Life Ins. Co.* v. *Deer Lodge Co.*, 495.

STATES.

1. *Controversies between; allowance of time for settlement.*

In a controversy between States, this court will not refuse a request made in good faith by one of the parties for reasonable time to effect a settlement, but will comply therewith as near as it can consistently with justice. *Virginia* v. *West Virginia*, 89.

2. *Same.*
On complainant's motion to proceed to final hearing and respondent's request for reasonable time to proceed with negotiations for amicable adjustment the case is assigned for next April. *Ib.*

3. *Enabling acts; power of Congress to make conditions in.*
Congress has power to make conditions in an Enabling Act, and require the State to assent thereto, as to such subjects as are within the regulating power of Congress. (*Coyle* v. *Oklahoma*, 221 U. S. 559, 574.) *United States* v. *Sandoval*, 28.

4. *Enabling acts; power of Congress to make conditions in; effect to restrain power of State.*
Such legislation, when it derives its force not from the resulting compact but solely from the power of Congress over the subject, does not operate to restrict the legislative power of the State in respect to any matter not plainly within the regulating power of Congress. *Coyle* v. *Oklahoma*, 221 U. S. 559, distinguished. *Ib.*

5. *Foreign corporations; right to exclude or regulate.*
A State may, so long as it does not violate any principle of the Federal Constitution, exclude from its border a foreign corporation or prescribe the conditions upon which it may do business therein. *Baltic Mining Co.* v. *Massachusetts*, 68.

6. *Foreign corporations; imposition of excise tax; validity under Constitution.*
Where a foreign corporation carries on a purely local business separate from its interstate business, the State may impose an excise tax upon it for the privilege of carrying on such business and measure the same by the authorized capital of the corporation. *Ib.*

7. *Police power; prohibition of child labor in dangerous occupations within.*
A State is entitled to prohibit the employment of persons of tender years in dangerous occupations; and in order to make the prohibition effective it may compel employers at their peril to ascertain whether their employés are in fact below the age specified. *Sturges & Burn Mfg. Co.* v. *Beauchamp*, 320.

8. *Taxation; right to lay privilege tax on commercial agencies.*
A State may lay an excise or privilege tax on conducting commercial agencies unless it has the effect of directly violating a Federal

right such as burdening interstate commerce. *United States Fidelity & Guaranty Co.* v. *Kentucky*, 394.

See APPEAL AND ERROR, 3, 4; CONGRESS, POWERS OF, 2; CONSTITUTIONAL LAW, 4, 19; COURTS, 6; INDIANS, 4, 7; INTERSTATE COMMERCE, 22–28; JURISDICTION, G 1, 2; NATIONAL BANKS; PUBLIC LANDS, 4, 8, 9, 10; RAILROADS, 4, 6; RATE REGULATION, 1, 6; STATUTES, A 17; TAXES AND TAXATION.

STATUTES.

A. CONSTRUCTION OF.

1. *Amendments by one branch of legislature.*

A paragraph in a statute which is plain and unambiguous, must be accepted as it reads even though inserted as an amendment by one branch of the legislature. *Luria* v. *United States*, 9.

2. *Codes; duality of procedure not favored.*

The court will if possible avoid construing a code of procedure as establishing a dual instead of a single procedure in the prosecution of crimes committed within the same territorial jurisdiction. *Summers* v. *United States*, 92.

3. *Implications; validity of that which is contrary to.*

That which is contrary to the plain implication of a statute is unlawful, for what is clearly implied is as much a part of a law as that which is expressed. *Luria* v. *United States*, 9.

4. *Legality and justice favored in.*

Courts are repelled from giving such a construction to a statute as will raise grave doubts of its legality as well as of its justice. *Union Pacific R. R. Co.* v. *Snow*, 204.

5. *Literal interpretation; when not to be given.*

Courts will not enforce a literal interpretation of a statute if antecedent rights are affected or human conduct given a consequence the statute did not intend. *Ib.*

6. *Meaning of words "provisions of this section."*

The words "provisions of this section" used in a statute naturally mean every part of the section, one paragraph as much as another. *Luria* v. *United States*, 9.

7. *Manifest purpose controlling.*
A statute, the evident purpose of which is to save expense in litigation, will be construed in the light of this manifest purpose. *Rainey* v. *Grace & Co.*, 703.

8. *Manifest purpose controlling; effect of better rule in earlier statute.*
Even if it might be true that the earlier act prescribed the better rule, where Congress having full authority has acted it is the duty of the courts to enforce the legislation with a view of effecting the purpose for which it was enacted. *Ib.*

9. *Purpose as controlling consideration.*
The purpose of a statute is the ever insistent consideration in its interpretation, and this court will not attribute to a statute so important as the Food and Drugs Act the defect of ineffectiveness as to its execution. *United States* v. *Antikamnia Co.*, 654.

10. *Penal provisions in; effect of.*
The fact that a statute has penal character does not mean that it should not be given its reasonable intendment. *Ib.*

11. *Policy and spirit considered.*
The policy and spirit of a statute should be considered in construing it as well as the letter. *Eastern Extension, A. & C. Telegraph Co.* v. *United States*, 326.

12. *Prospective and not retrospective operation the rule.*
The first rule of construction of statutes is that legislation is addressed to the future and not to the past. This rule is one of obvious justice. *Union Pacific R. R. Co.* v. *Laramie Stock Yards Co.*, 190.

13. *Retrospective operation not favored.*
Unless its terms unequivocally import that it was the manifest intent of the legislature enacting it, a retrospective operation will not be given to a statute which interferes with antecedent rights or by which human action is regulated. *Ib.*

14. *Retrospective operation not favored.*
In the absence of clearly expressed legislative intent, retrospective operation will not be given to statutes; nor in absence of such intent will a statute be construed as impairing rights relied upon in past conduct when other legislation was in force. (*Union Pacific R. R. Co.* v. *Laramie Stock Yards, ante*, p. 190.) *Cameron* v. *United States*, 710.

15. *Repeals by implication; when later act held to repeal earlier one.*
Repeals by implication are not favored and only in cases of clear inconsistency will a later act be held to repeal an earlier one on the same subject, but if there is clear inconsistency, as in this case, the earlier act cannot stand. (*King* v. *Cornell*, 106 U. S. 395.) *Rainey* v. *Grace & Co.*, 703.

16. *Riders to appropriation bills; effect of practice.*
Even though it may have become a modern practice in Congress to adopt independent legislation by attaching "riders" to appropriation bills, the judiciary is not relieved from the old duty of correctly interpreting the statute when enacted. *Pennington* v. *United States*, 631.

17. *Of state statute; questions of relations of state officers to State avoided.*
An act of a State will not be construed in such a manner as to raise questions concerning relations of state officers to the State if such a construction can be avoided. *Mulcrevy* v. *San Francisco*, 669.

See CLAIMS AGAINST THE UNITED STATES, 3;
COURTS, 3;
CRIMINAL LAW, 3;
JUDICIAL CODE;
PRACTICE AND PROCEDURE, 7-11; 14-16;
PURE FOOD AND DRUGS ACT;
SAFETY APPLIANCE ACT.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STIPULATION OF COUNSEL.

See ACTIONS, 5;
PRACTICE AND PROCEDURE, 33.

SUBROGATION.

See BANKS AND BANKING, 2;
INDIANS, 3.

SWAMP LANDS.

See PUBLIC LANDS, 8, 9, 10.

TAXES AND TAXATION.

1. *Of separate estates in realty.*
While real estate is generally taxed as a unit, separate estates therein may be taxed to the separate owners of such estates, where the title has been severed. *Downman* v. *Texas*, 353.

2. *Same; constitutional validity of taxation of mineral rights to one and surface estate to another.*

One who has purchased the mineral rights in land with the present right to enter and work the same is not denied equal protection of the law because in his case the mineral rights are taxed to him and the surface estate is taxed to the owner of the fee. *Ib.*

3. *Over-assessment of one of two estates in land; effect of.*

If his mineral rights are not over-assessed it is no defense that the surface estate may be over-assessed. *Ib.*

4. *Of interest in lands segregated from public domain.*

When an interest in land, whether freehold or for years, passes from the public domain into private hands, there is a natural implication that it goes with the ordinary incidents of private property and subject to be taxed. (*New York ex rel. Metropolitan Street Ry.* v. *Tax Commissioners*, 199 U. S. 1.) *Trimble* v. *Seattle*, 683.

5. *Of leased property; restrictions on; leases by State.*

In ordinary cases of leased property, whether the lessor or lessee shall bear the burden of taxation is not a matter of public concern, but an obligation not to tax property leased by the State is a restriction of public import not lightly to be imposed. *Ib.*

6. *Of property leased by State; validity of.*

In this case *held*, that the imposing of assessments for benefits on property in Seattle leased by the State of Washington is not an unconstitutional impairment of an implied covenant in the lease that the lessor will pay assessments. *Ib.*

7. *State; process to collect; agency to collect.*

A State may provide for garnishment or trustee process to collect a valid tax and may constitute a bank its agent to collect the tax from its depositors. *Clement National Bank* v. *Vermont*, 120.

See BANKS AND BANKING, 3;
CONSTITUTIONAL LAW, 1, 3, 7, 12, 15, 17, 18;
CORPORATION TAX LAW;
INTERSTATE COMMERCE, 23–28;
NATIONAL BANKS, 1–9;
PLEADING, 2;
STATES, 6, 8.

TAX SALES.

See CONSTITUTIONAL LAW, 11.

TELEPHONE COMPANIES.

See PARTIES, 2, 3.

TERMINALS.

See COMMON CARRIERS;
INTERSTATE COMMERCE, 14, 16·
RAILROADS, 8, 9.

TERRITORIAL COURTS.

See COURTS, 8;
PRACTICE AND PROCEDURE, 25.

TIME.

Disregard of when.

Time may sometimes be disregarded when it is insignificant, but not where it has sufficed to materially change the financial positions of the parties. *National City Bank* v. *Hotchkiss*, 50.

See BANKRUPTCY, 1;
BONDS, 5;
PRACTICE AND PROCEDURE, 31, 32.

TITLE.

See EJECTMENT; INDIANS; PRACTICE AND PROCEDURE, 12; PUBLIC LANDS, 1, 2, 6, 8, 9, 10; VENDOR AND VENDEE.

TORTS.

See ACTIONS, 9.

TRANSPORTATION.

See RAILROADS, 10.

TREATIES.

See JURISDICTION, E 1.

TRIAL.

Argument of counsel; prejudicial error in.

This court will not upset a verdict upon the speculation that the jury did not do their duty and follow the instructions of the court; the fact that the attention of the jury was called by counsel for the Government to the statement on the letter-head of the surety company defendant that its capital was $1,000,000, *held* not to have been prejudicial. *Graham* v. *United States*, 474.

See EVIDENCE, 1;
INSTRUCTIONS TO JURY.

TRIAL BY JURY.

See NATURALIZATION, 9.

TRUSTS.

Establishment; sufficiency of showing.

A trust cannot be established in an aliquot share of a man's whole property, as distinguished from a particular fund, by showing that trust monies have gone into it. *National City Bank* v. *Hotchkiss*, 50.

ULTRA VIRES.

See NATIONAL BANKS, 5.

UNITED STATES.

Property rights; power of courts to compel surrender of property held by.

The United States, as the owner in possession of property, cannot be interfered with behind its back; nor can the courts compel the officer having the custody of such property to surrender it in a proceeding to which the United States is not, and cannot be made, a party. *Goldberg* v. *Daniels*, 218.

See ACTIONS, 9; CONTRACTS, 2; CONSTITUTIONAL LAW, 4; PUBLIC LANDS, 5.

VENDOR AND VENDEE.

Passing of title on delivery; effect of postponement of payment.

Although the purchaser may have the right to rescind for a condition subsequent, title may pass on delivery; and so *held* in this case that title to hay purchased by, and delivered to, a railroad company, passed to it although payment was postponed until after inspection and acceptance. *Delaware, L. & W. R. R. Co.* v. *United States*, 363.

See BANKRUPTCY.

VERDICT.

See PLEADING, 5, 6.

WAIVER.

See MECHANICS' LIENS, 1.

WITNESSES.

See BANKRUPTCY, 2;
EVIDENCE, 2, 3.

WORDS AND PHRASES.

"*In accordance with this act*" (see Practice and Procedure, 8). *Straus* v. *Foxworth*, 162.

"*Income*" (see Corporation Tax Law, 8, 10). *Stratton's Independence* v. *Howbert*, 399.

"*Provisions of this section*" (see Statutes, A 6). *Luria* v. *United States*, 9.

"*To attempt to enter into the commerce of the United States*," as used in act of August 5, 1909, 36 Stat. 11 (see Customs Law, 1). *United States* v. *25 Packages of Panama Hats*, 358.

WRIT AND PROCESS.

See TAXES AND TAXATION, 7.